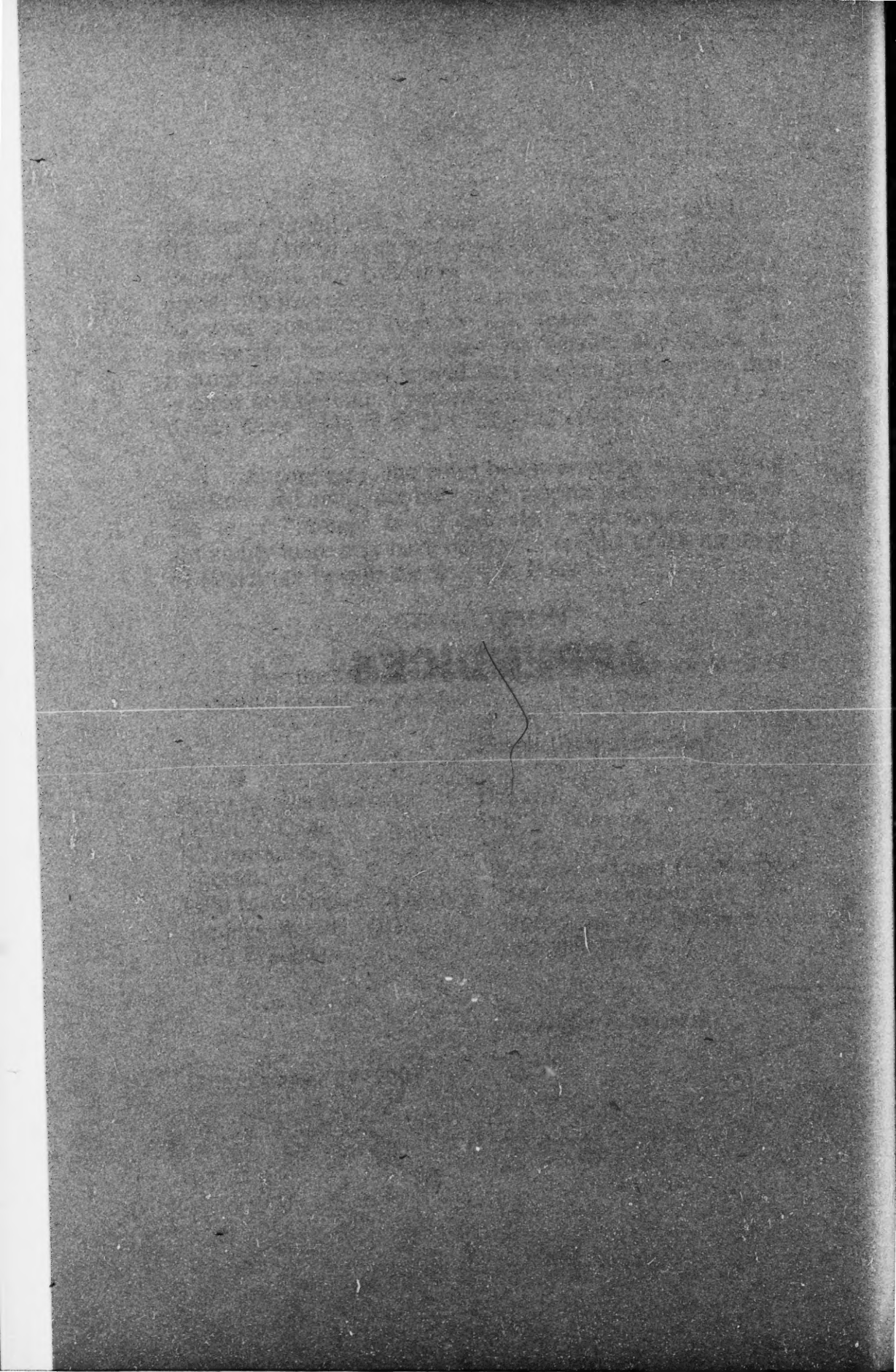

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-15148, No. 02-10810, No. 02-11264

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus DAVID HENSON MCNAB, ROBERT D. BLANDFORD, et al., Defendants-Appellants. UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ABNER SCHOENWETTER, ROBERT D. BLANDFORD, Defendants-Appellants. UNITED STATES OF AMERICA, Plaintiff-Appellee, versus DAVID HENSON MCNAB, ABNER SCHOENWETTER, et al., Defendants-Appellants.

March 21, 2003, Decided
March 21, 2003, Filed

As Amended May 29, 2003. Modified and rehearing denied by *United States v. McNab, 331 F.3d 1228, 2003 U.S. App. LEXIS 10708 (11th Cir. Ala., May 29, 2003)*

JUDGES: Before HULL, WILSON and FAY, Circuit Judges. FAY, Circuit Judge, dissenting.
OPINION: WILSON, Circuit Judge:

The Court hereby substitutes the following opinion in place of the opinion which was issued on March 21, 2003.

David Henson McNab, Abner Schoenwetter, Robert D. Blandford, and Diane H. Huang (collectively the defendants) appeal the convictions and sentences they received after a jury found them guilty of conspiracy, smuggling, money laundering, and Lacey Act violations in connection with the importation, sale, and purchase of Caribbean spiny lobsters from Honduras. The defendants' main argument on appeal is that the district court erred in determining that the Honduran laws that served as the underlying basis of their convictions were valid and enforceable. The defendants contend that the Honduran laws were invalid, and, therefore, there was no violation of foreign law upon which to base their convictions. [1]

The defendants' challenge to the validity of the Honduran laws requires us to undertake our own foreign law determination. Our task is complicated by conflicting representations from Honduran officials regarding the validity of the Honduran laws. Throughout the investigation and trial, Honduran officials offered support and assistance to the United States government, and both the government and the district court relied upon the Honduran officials' verification of the Honduran laws. Shortly after the defendants were convicted, the Honduran government reversed its position; it currently refutes the validity of the laws it previously verified. Therefore, we must decide

---

[1] The Lacey Act prohibits the importation of "fish or wildlife taken, possessed, transported, or sold in violation of . . . any foreign law." *16 U.S.C. § 3372(a)(2)(A)*. If the lobsters were not imported, transported, and sold in violation of Honduran law, there could be no Lacey Act violations. Accordingly, if the lobsters were brought into the United States legally and were not criminally-derived property, there could be no smuggling or money laundering violations.

whether our courts are bound by a foreign government's new representations regarding the validity of its laws when its new representations are issued only postconviction and directly contravene its original position upon which the government and our courts relied and the jury acted. This question is a matter of first impression in this Circuit and apparently the other circuits as well.

For the reasons set forth below, we affirm the defendants' convictions and sentences.

BACKGROUND

On February 3, 1999, agents of the National Marine Fisheries Service (NMFS) received an anonymous facsimile, which provided that McNab's cargo transport vessel, the M/V Caribbean Clipper, would arrive in Bayou la Batre, Alabama on February 5, 1999, with a shipment of lobsters containing "undersized (3 & 4 oz) lobster tails, [which was] a violation of Honduran law." The facsimile further provided that Honduras prohibits the bulk exportation of lobsters and requires that lobsters be packed in boxes for export.

In response to the anonymous tip, NMFS agents consulted the Direccion General de Pesca y Acuicultura (DIGEPESCA) in Honduras [2] regarding the legality of the lobster shipment referenced in the facsimile. The NMFS agents questioned whether the shipment violated the Lacey Act, which makes it unlawful to import into the United States "fish or wildlife [that has been] taken, possessed, transported, or sold in violation of . . . any foreign law." *16 U.S.C. § 3372(a)(2)(A)*. In three separate letters responding to the agents' inquiry, the director general of the DIGEPESCA described some of Honduras's fishing laws and confirmed

---

[2] The DIGEPESCA is the agency within Honduras's Secretaria de Agricultura y Ganaderia (SAG) that is responsible for the enforcement of the fishing laws and the execution of fishing programs.

that McNab's shipment "ha[d] been illegally transported in violation of the Fishing Law, the Industrial and Hygienic Sanitary Inspection Regulation for Fish Products and Resolution No. 030-95." The director general provided authentic copies of the applicable laws and stated that the DIGEPESCA was ready to support all efforts by the government to prosecute persons who violate the Lacey Act.

In early March of 1999 NMFS agents seized the lobster shipment that was referenced in the anonymous facsimile based upon the director general's assurances that the lobsters had been exported in violation of Honduran law. Over the next few months, NMFS agents communicated with Honduran officials about the Honduran laws and the legality of the seized lobster shipment. In June of 1999 NMFS special agents and an attorney in the United States National Oceanic and Atmospheric Administration Office of the General Counsel met with various Honduran officials from the Secretaria de Agricultura y Ganaderia (SAG) in Tegucigalpa, Honduras. The minister, the vice minister, the director of legal services, the director of legal affairs, the secretary general of the SAG, the director general of the DIGEPESCA, and the legal advisor for the Servicio Nacional de Sanidad Agropecuaria (SENASA) [3] confirmed that the lobsters had been exported illegally without first being inspected and processed. Furthermore, the Honduran officials confirmed that there was a 5.5-inch size limit for lobster tails and that all catches had to be reported to Honduran authorities. The Honduran officials provided certified copies of the laws in question. In September of 1999 NMFS agents inspected the lobster shipment that had been seized earlier in the year. The inspection confirmed that the seized lobsters were packed in bulk plastic bags without being processed and revealed that a significant number had a tail length that was less than the 5.5

[3] Like the DIGEPESCA, the SENASA is an agency within the SAG. The SENASA is responsible for the enforcement of hygiene laws and regulations.

inches required by the Honduran size limit restriction. In addition, many of the lobsters were egg-bearing or had their eggs removed.

In March of 2000 two Honduran officials, a legal advisor in the Despacho Ministerial and a SAG legal advisor, traveled to Alabama to meet with government prosecutors and investigators. Both legal advisors provided written statements that cited Resolution 030-95 as a valid law regulating the lobster fishing industry. They also described the processing requirements mandated by Regulation 0008-93. [4] They further explained that Honduras prohibits the harvesting of egg-bearing lobsters. [5] Based upon the NMFS's investigation and the verification of the applicable foreign laws by the Honduran officials charged with regulating the lobster fishing industry, the government decided to prosecute the defendants for their roles in the illegal importing scheme. Subsequently, the grand jury returned a forty-seven-count second superseding indictment in September of 2000. [6]

---

[4] Processing lobster tails involves several steps: thawing, sorting, and grading the lobsters by quality and size; placing the tails in individual plastic sleeves; and packing them in boxes.

[5] The legal advisors cited Resolution 003-80 as authority for the prohibition against harvesting or destroying egg-bearing lobsters. Resolution 003-80 is substantially similar to Article 70(3) of the Fishing Law, as both laws prohibit the harvesting or destruction of lobster eggs. At the foreign law hearing, the government acknowledged that it could not verify the publication of Resolution 003-80 in La Gaceta and therefore relied upon Article 70(3) as a Lacey Act predicate.

[6] Although the investigation focused initially upon the seized shipment referenced in the facsimile, the indictment charged the defendants with violations based upon numerous shipments of lobsters between 1996 and 1999.

To determine the validity of the relevant Honduran laws, the district court conducted a pretrial hearing on foreign law in September of 2000. Most of the defendants' evidence at the hearing pertained to the validity of Resolution 030-95, which established a 5.5-inch size limit for lobsters.[7] At the government's request, the minister of the SAG sent Secretary General Liliana Patricia Paz, the SAG's highest-ranking legal official, to testify at the foreign law hearing. Secretary General Paz testified as to the validity of various laws and confirmed that Resolution 030-95, Regulation 0008-93, and Article 70(3) of the Fishing Law [8] were in effect and legally binding during the time period covered by the indictment. She also explained the means by which a Honduran citizen may seek the invalidation of a resolution in Honduras,[9] and she testified that no such proceeding regarding Resolution 030-95 had been initiated at that time. Persuaded by the testimony of Secretary General Paz, the district court found that the government met its burden of establishing the validity of the Honduran laws that served as the predicates

---

[7] Two law professors, both experts in Honduran law, testified for the defendants. The defendants also submitted a number of legal opinions from members of the Honduran legal community, including the attorney general of Honduras and the regional prosecutor of the Fiscalia Especial Para la Defensa de la Constitucion, and a declaration from a practicing Honduran attorney.

[8] The Fishing Law is a comprehensive statute regulating the Honduran fishing industry. *See* Decreto No. 154, May 19, 1959, La Gaceta, June 9, 1959.

[9] The Honduran judicial system includes a separate administrative law court system in which disputes relating to administrative matters are adjudicated. Among the procedures available in the administrative court system is an action by a Honduran citizen who claims to be affected adversely by some administrative rule to seek a declaration that the rule is invalid. Such an action is first brought in the Honduran Court of the First Instance of Administrative Law. Decisions from that court may be appealed to the Honduran Court of Appeals for Administrative Law.

for the Lacey Act charges. Shortly after the foreign law hearing, a jury trial was conducted, and the defendants were found guilty on multiple counts.[10]

After the trial, the defendants filed a number of motions seeking to have their convictions overturned.[11] In the motions, they attacked the validity of the foreign laws underlying their convictions, citing recent developments in Honduran law. In preparation for a hearing on the motions, an official from the United States Department of Justice and agents from the NMFS and the Federal Bureau of Investigation traveled to Honduras in early August of 2001 to discuss the defendants' challenges to the validity of the Honduran laws. They received affidavits from three Honduran government officials, including Secretary General Paz, confirming the validity of the laws the defendants were challenging. They also received an affidavit from the minister of the SAG, stating that those Honduran government officials were authorized to provide advice on the enforcement and validity of the laws. After the hearing, the district court dismissed each of the defendants' posttrial motions. Thereafter, in August of 2001, the district court sentenced McNab, Blandford, and Schoenwetter to ninety-seven months of imprisonment and Huang to twenty-four months of imprisonment.

---

[10] McNab was found guilty of conspiracy, smuggling, and money laundering. Blandford was found guilty of conspiracy, smuggling, Lacey Act violations, and money laundering, as well as two lesser included offenses under the Lacey Act. Schoenwetter was found guilty as charged for conspiracy and smuggling, and Huang was found guilty as charged for conspiracy, Lacey Act violations, and false labeling.

[11] The final set of motions included a motion to dismiss because the indictment failed to charge a crime, a motion for a new trial based upon newly discovered evidence, and a motion for redetermination of foreign law based upon developments in Honduran law.

After sentencing, the defendants appealed their convictions based, in part, upon their contention that the Honduran laws used as the predicates for the Lacey Act convictions were invalid or void during the time period covered by the indictment.[12] In December of 2001 a government attorney and NMFS agents traveled to Honduras to discuss the defendants' new documents with Honduran officials to prepare the government's brief on appeal. Once again, the Honduran officials confirmed their prior statements regarding the validity of the Honduran laws.

Based upon our order, in January of 2002 McNab filed a Motion for Order Certifying Intention to Grant New Trial Upon Remand with the district court, which was subsequently adopted by Blandford, Schoenwetter, and Huang. After initially denying the motion, the district court granted the defendants' motion for reconsideration. Upon reconsideration, the district court affirmed its earlier order that it would not certify its intention to grant a new trial. The defendants appeal that order and argue that the district court erred in denying the motion to certify its intention to grant a new trial upon remand. In light of our holding regarding the validity of the Honduran laws, we need not address this issue.

The defendants raise a number of issues in these consolidated appeals. First, they argue that the scope of the Lacey Act is limited to foreign statutes and that the Honduran resolutions and regulations listed in the indictment were used improperly as predicates for their convictions. Second, they

---

[12] After the initial notice of appeal, the defendants obtained additional support for their claim that the district court misinterpreted Honduran law. As a result, they filed a Motion for Judicial Notice, as well as alternative motions regarding newly issued Honduran legal opinions with this Court. We denied those motions without prejudice and held that the motions could be renewed if the district court refused to certify its intention to grant a new trial pursuant to *United States v. Ellsworth*, 814 F.2d 613 (*11th Cir. 1987*) (per curiam).

contend that the district court's interpretation of the Honduran resolutions and regulations was erroneous and that the Honduran laws that served as predicates for the convictions were invalid. Third, McNab argues that the district court abused its discretion by excluding evidence at trial relating to his "knowledge" of Honduran law. Fourth, the defendants assert that the district court made several errors with respect to the jury instructions. Fifth, they contend that the jury's verdicts were based upon insufficient evidence. Finally, Schoenwetter and Blandford argue that the district court erred in failing to postpone their sentencing and in determining the length of their sentences.

DISCUSSION

I. Scope of the Lacey Act

The first issue we address is whether the phrase "any foreign law" in the Lacey Act includes foreign regulations and other legally binding provisions that have the force and effect of law. The defendants argue that the phrase "any foreign law" should be read to mean foreign statutes and not foreign regulations or provisions that are legally binding. According to their argument, Resolution 030-95 and Regulation 0008-93 do not fall within the scope of the Lacey Act, because they are not statutes.[13] They rely upon what

---

[13] The parties do not dispute the following explanation of the Honduran legal framework:

> The Government of Honduras is a constitutional republic. Its legal system is generally under the continental or civil law system . . . . [T]he Constitution is the supreme law of the Republic.
>
> The adoption of statutes in Honduras (issued as "Decrees") is the exclusive prerogative of the National Congress. At the same time, the Constitution . . . vests in the

they consider a distinction by Congress between "any law or regulation of any State" and "any foreign law." *16 U.S.C. § 3372(a)(2)(A)*. The defendants argue that by failing to include foreign regulations explicitly, Congress intended that only foreign statutes could serve as the basis for a foreign law Lacey Act violation.

Br. of Amicus Curiae of the Embassy of Honduras and the Asociacion de Pescadores del Caribe in Supp. of Def.-Appellant David Henson McNab at 8-9 (citations omitted).

In accordance with the plain meaning doctrine, "we begin our construction of . . . [the Lacey Act] where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision." *Harris v. Garner, 216 F.3d 970, 972 (11th Cir. 2000)* (en banc), *cert. denied, 532 U.S. 1065, 150 L. Ed. 2d 208, 121 S. Ct. 2214 (2001)*; *United States v. Gilbert, 198 F.3d 1293, 1298 (11th Cir. 1999)*. It is well established that "[w]hen the words of a statute are unambiguous . . . [the] judicial inquiry is complete." *CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 1222 (11th Cir. 2001)* (first alteration in original) (internal quotation marks omitted); *see also Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253-54, 117 L. Ed. 2d 391, 112 S. Ct. 1146 (1992)*

Executive Branch the exclusive authority to issue "Regulations[."] Regulations (issued in the form of "Acuerdos" - in English, "Accords" or "Decisions" or "Agreements") are general rules of conduct applicable to all who may be affected by them and they have the force of law. The Constitution provides that Regulations may be issued only by the President of the Republic with the co-signature of the Secretary of State. [sic] (*i.e.* Chief Minister) of the pertinent ministry. Both statutes and regulations become effective only when they are published in *La Gaceta*, which is the Honduran equivalent of the *Federal Register*.

("Courts must presume that a legislature says in a statute what it means and means in a statute what it says there."). When, however, "the language is ambiguous or leads to absurd results, . . . [we] may consult the legislative history and discern the true intent of Congress. *United States v. Kattan-Kassin, 696 F.2d 893, 895 (11th Cir. 1983).*[14]

With this guidance in mind, we examine the language of the Lacey Act. The Lacey Act provides that "it is unlawful for any person . . . to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law." *16 U.S.C. § 3372(a)(2)(A).* The Act defines "law" as those "*laws* . . . which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants." *16 U.S.C. § 3371(d)* (emphasis added).

Unfortunately, the statutory definition defines the word "law" by using the word "laws."[15] While the definition is helpful in determining what the "law" must regulate, it is silent as to whether "law" is restricted to statutes or includes regulations and other provisions that foreign governments use to promulgate legally binding rules. Thus, we turn first to the common usage or ordinary meaning of the word "law" to determine its plain meaning. *Cf. Consol. Bank, N.A. v. United*

---

[14] We note that although a court may resort to extrinsic materials if the statutory language is ambiguous or if the interpretation causes absurd results, only the latter is a true exception to the plain meaning rule. *CBS Inc., 245 F.3d at 1227* ("Stating that ambiguity establishes an exception, instead of disestablishes the predicate for the rule, confuses things.").

[15] *Section 3371(d)* provides in full, "The terms 'law,' 'treaty,' 'regulation,' and 'Indian tribal law' mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants." *16 U.S.C. § 3371(d).*

States Dep't of the Treasury, 118 F.3d 1461, 1464 (11th Cir. 1997) ("In the absence of a statutory definition of a term, we look to the common usage of words for their meaning."). "[T]o determine the common usage or ordinary meaning of a term, courts often turn to dictionary definitions for guidance." *See CBS Inc., 245 F.3d at 1223.*

We read the word "law" to refer to laws "which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants," and the word "treaty" to refer to treaties "which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants," and so forth.

Merriam Webster's Collegiate Dictionary provides several definitions of law, including "a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority" and "the whole body of such customs, practices, or rules." *Merriam Webster's Collegiate Dictionary* 659 (Frederick C. Mish et al. eds., 10th ed. 1996). Under these broad definitions of the word "law," the phrase "any foreign law" incorporates the Honduran decrees and regulations at issue. *See United States v. 594,464 Pounds of Salmon, 871 F.2d 824, 826 (9th Cir. 1989).*

On the other hand, there are more narrow definitions of the word "law" that also are commonly used. *Black's Law Dictionary* provides several definitions of the word "law," including one that defines law simply as "[a] statute." *Black's Law Dictionary* 889 (Bryan A. Garner et al. eds., 7th ed. 1999). This definition is plausible when the phrase "any foreign law" is read in conjunction with the rest of *§ 3372(a)(2)(A).* For example, the defendants assert that "any foreign law" can refer only to foreign statutes, because to read "any foreign law" to include regulations would render

the word "regulation" in the earlier phrase "any law or regulation of any State" meaningless.[16]

While the defendants advocate this interpretation of the statute, it is not the only reasonable one. Another is that Congress intended to punish violations of state laws and state regulations and to punish violations of foreign laws, whatever form those foreign laws may take. The Ninth Circuit, in explaining why it interpreted "any foreign law" to cover different forms of foreign laws, emphasized how the world's diverse legal systems defy easy definition or categorization. It noted,

> Because of the wide range the forms of law may take given the world's many diverse legal and governmental systems, Congress would be hard-pressed to set forth a definition that would adequately encompass all of them. . . . Thus, if Congress had sought to define "any foreign law" with any kind of specificity whatsoever, it might have effectively immunized . . . [conduct] under the Act despite violation of conservation laws of a large portion of the world's regimes that possess systems of law and government that defy easy definition or categorization. It notes

594,464 Pounds of Salmon, 871 F.2d at 827-28. In other words, the argument is that Congress specifically chose to limit domestic law to statutes and regulations, but

---

[16] "A basic premise of statutory construction is that a statute is to be interpreted so that no words shall be discarded as being meaningless, redundant, or mere surplusage." *United States v. Canals-Jimenez, 943 F.2d 1284, 1287 (11th Cir. 1991).*

specifically chose to use the language "any foreign law" to cover the wide varieties of laws in foreign countries.

The net result is that there are several reasonable ways to interpret the word "law" in the phrase "any foreign law." As a result of this ambiguity, we look beyond the language of the statute to determine legislative intent. We thus now look to the legislative history of the Lacey Act to ascertain Congress's intent. *Fed. Reserve Bank of Atlanta v. Thomas, 220 F.3d 1235, 1239 (11th Cir. 2000).* "In trying to learn Congressional intent by examining the legislative history of a statute, we look to the purpose the original enactment served, the discussion of statutory meaning in committee reports, the effect of amendments whether accepted or rejected and the remarks in debate preceding passage." *Rogers v. Frito-Lay, Inc., 611 F.2d 1074, 1080 (5th Cir. 1980).*[17]

The Lacey Act was introduced by Representative John F. Lacey of Iowa in 1900. H.R. Rep. No. 97-276, at 7 (1981) (discussing the enactment of the Lacey Act). Representative Lacey recognized that individual states were unable to protect their wildlife, because their laws did not reach into neighboring states. *Id.* Thus, he asserted that a federal law was necessary to outlaw the interstate traffic in wildlife illegally taken from their state of origin.[18] *Id.* By 1981 Congress recognized the need to strengthen the Lacey Act in response to "the massive illegal trade in fish, wildlife and plants." 127 Cong. Rec. 17,327 (1981) (remarks of Senator Lincoln Chafee). Congress thus amended the Lacey Act in

---

[17] In *Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981)* (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

[18] In 1935 the Lacey Act was amended to include foreign law because of concern over the illegal marketing of wildlife from other countries. H.R. Rep. No. 97-276, at 7.

1981 "to correct . . . insufficiencies" in the Act and "to simplify administration and enforcement."[19] S. Rep. No. 97-123, at 2 (1981), *reprinted in* 1981 U.S.C.C.A.N. 1748, 1749.

Although there are certain parts of the legislative history of the Lacey Act that support the defendants' position to some extent, the legislative history reflects that "the [main] thrust of Congress's intention in amending the Act was to expand its scope and enhance its deterrence effect."[20] *594,464 Pounds of Salmon, 871 F.2d at 828.* Indeed, Congress clearly stated that the amendments were meant to strengthen the existing wildlife protection laws and to "provide [the government] the tools needed to effectively control the massive illegal trade in fish, wildlife and plants." 127 Cong. Rec. 17,327 (remarks of Senator Chafee); *see also* 127 Cong. Rec. 26,537 (1981) (remarks of Representative John Breaux). The Senate Report provided that the amendments "would allow the Federal Government to provide more adequate support for the full range of State, foreign and Federal laws that protect wildlife." S. Rep. No. 97-123, at 4. The amendments were intended to "raise both the civil and criminal penalties of the current laws and target commercial violators and international traffickers." 127

---

[19] *The Lacey Act Amendments of 1981* combined the Lacey Act of 1900 and the *Black Bass Act of 1926.* 127 Cong. Rec. 26,537 (1981) (remarks of Representative John Breaux). The Black Bass Act was similar to the Lacey Act in that it prohibited the interstate transportation of fish taken in violation of state or foreign law. *See* 127 Cong. Rec. 17,329 (remarks of Senator Howard Baker).

[20] The defendants point to the fact that the pre-1981 Lacey Act prohibited trade in wildlife taken in violation of "any law or regulation of any State or foreign country," but that now the Lacey Act does not refer to foreign laws and regulations. "While the legislative history is not totally one-sided, the thrust of Congress's intention in amending the Act was to expand its scope and enhance its deterrence effect." *594,464 Pounds of Salmon, 871 F.2d at 828.*

Cong. Rec. 17,328 (remarks of Senator Chafee). By strengthening the penalty provisions of the Lacey Act, Congress intended "to give the Federal Government stronger enforcement tools to stop the large-scale importation and taking of fish . . . which enjoy protection under other foreign . . . laws." *Id.* at 17,329 (remarks of Senator James Strom Thurmond).

Our examination of the legislative history of the Lacey Act leads us to the conclusion that Congress by no means intended to limit the application of the Act by its adoption of the 1981 amendments. The defendants' interpretation is untenable, because it would restrict the application of the Lacey Act unduly and would thwart Congress's stated goal of strengthening the Act by amending it in 1981. *See id.* at 17,328 (remarks of Senator Chafee). Their narrow interpretation of the phrase "any foreign law" would prevent the wildlife conservation laws of many countries from serving as the basis for Lacey Act violations and would limit the Act's utility. We therefore conclude that regulations and other such legally binding provisions that foreign governments may promulgate to protect wildlife are encompassed by the phrase "any foreign law" in the Lacey Act.[21] *See United States v. Lee, 937 F.2d 1388, 1391-92 (9th*

---

[21] The defendants also argue that because the Lacey Act is ambiguous as to the meaning of "any foreign law," the rule of lenity requires that any doubt be resolved in their favor. Lenity, however, is "reserved . . . for those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute." *Moskal v. United States, 498 U.S. 103, 108, 112 L. Ed. 2d 449, 111 S. Ct. 461 (1990)* (internal quotation marks omitted); *see also United States v. Curry, 902 F.2d 912, 915 (11th Cir. 1990).* As our examination of the legislative

Cir. 1991) (holding that a Taiwanese fishing regulation constituted "foreign law"); *594,464 Pounds of Salmon, 871 F.2d at 828* (holding the same).

As we have determined that the phrase "any foreign law" includes nonstatutory provisions such as Resolution 030-95 and Regulation 0008-93, we now turn to the defendants' argument that their convictions were based upon the district court's erroneous interpretation of foreign law.

II. Honduran Laws

The defendants contend that the Honduran laws that served as predicates for their convictions were invalid. Specifically, they argue that (1) Resolution 030-95, which established a 5.5-inch size limit for lobsters, never had the effect of law, because it was promulgated improperly and has been declared void by the Honduran courts; (2) Regulation 0008-93, which established inspection and processing requirements for the lobster fishing industry, was repealed in 1995, prior to the time period covered by the indictment; and (3) Article 70(3), which prohibits the harvesting and destruction of lobster eggs, was misinterpreted by the district court and was repealed retroactively in 2001.

As the defendants were found guilty of conspiracy under a general verdict, there is no way to know which Honduran law the jury relied upon in determining their guilt. Thus, if any of the three Honduran laws that the defendants challenge were invalid during the time period covered by the indictment, the defendants' convictions must be reversed.[22]

---

history clarifies the purpose of and motivation behind the Lacey Act, the defendants' invocation of the rule of lenity fails.

[22] The government acknowledges that the rule stated above generally is true, but argues that the defendants are estopped from benefitting from that general rule because they "objected to a special verdict form and requested general

See Mills v. Maryland, 486 U.S. 367, 376, 100 L. Ed. 2d 384, 108 S. Ct. 1860 (1988) (In criminal cases, "the [Supreme] Court consistently has followed the rule that the jury's verdict must be set aside if it could be supported on one ground but not on another, and the reviewing court was uncertain which of the two grounds was relied upon by the jury in reaching the verdict.").

We review a district court's interpretation of foreign law de novo. *United States v. Gecas, 120 F.3d 1419, 1424 (11th Cir. 1997)* (en banc). Our determination of foreign law is complicated by the posttrial shift in the Honduran government's position regarding the validity of the laws at issue in this case.[23] The Honduran government now maintains that the laws were invalid at the time of the lobster shipments or have been repealed retroactively. Thus, we must decide whether we are bound by the Honduran government's current position regarding the validity of these laws, or whether we are free to follow the Honduran government's original position.

---

verdicts." We disagree. The record indicates that the only objection to the special verdict forms was made by Blandford's attorney, who initially stated that he did not "like" the special interrogatories. Upon hearing the government's explanations for the special verdict forms, none of the defendants made any further objections. Thus, the district court declined to use the government's special verdict forms sua sponte, apparently because it considered them too complicated for the jury members to use in their deliberations.

[23] Despite the fact that Honduran officials supported the government throughout the investigation and trial of this case, the Embassy of Honduras filed an amicus curiae brief in support of McNab.

As we begin our analysis, we must make clear that the crux of this case is the validity of the Honduran laws during the time period covered by the indictment. Much of the defendants' arguments focus upon the fact that none of the laws are currently valid; however, their reliance upon the current invalidity of the laws is misplaced. "Although Lacey Act offenses are predicated upon violations of [foreign] law, the statute nowhere states that a viable or prosecutable [foreign] law violation is necessary to support federal charges. Instead, the Act simply requires that the fish or wildlife have been obtained in violation of any [foreign] law . . . ." *United States v. Borden, 10 F.3d 1058, 1062 (4th Cir. 1993)* (internal quotation marks omitted).[24] The reference to foreign law in the Lacey Act is there to define what constitutes illegal conduct. Thus, the subsequent invalidation of the underlying foreign laws does not make the defendants any less culpable for their actions. If the laws were valid in Honduras during the time period covered by the indictment, the defendants violated the Lacey Act by importing the lobsters in violation of those laws. Whatever changes in the laws occurred after the lobsters were imported into the

---

[24] In *Borden*, two state statutes served as the predicates for the Lacey Act violations. *10 F.3d at 1062*. The defendant "contend[ed] that his indictment was invalid because the one-year statute of limitations for the predicate state offenses had expired by the time the indictment was returned." *Id.* He argued that the state statute of limitations governed Lacey Act violations, "because the existence of a *prosecutable* violation of state law was necessary to support a Lacey Act indictment." *Id.* The Fourth Circuit concluded that even though the Lacey Act "incorporates the substantive elements of state law," "it is not designed to incorporate state *procedural* law." *Id.* (internal quotation marks omitted). Thus, although the state statute of limitations had run on the state offense, the defendant's indictment still was valid.

United States illegally have no effect on the defendants' convictions.

In a Lacey Act prosecution, once the district court determines the validity of a foreign law during a given time period, it is up to the government to prove that the defendants knowingly violated those laws. *United States v. Todd, 735 F.2d 146, 151 (5th Cir. 1984).* The initial foreign law determination, however, is a question of law for the court. *See Fed. R. Crim. P. 26.1.* "The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." *Id.* Among the most logical sources for the court to look to in its determination of foreign law are the foreign officials charged with enforcing the laws of their country. The district court, in the course of a Lacey Act prosecution, is entitled to rely upon such representations by foreign officials as to the validity of their government's laws. The court reasonably may assume that statements from foreign officials are a reliable and accurate source and may use such statements as a basis for its determination of the validity of foreign laws during a given time period.[25]

---

[25] Although the amici suggest that the government used improper procedures, such as seeking out midlevel employees who were not authorized to render opinions on behalf of the Honduran government in its effort to ascertain the applicable Honduran laws, the record indicates quite the contrary. On February 9, 1999, an NMFS agent sent a formal request to the deputy director of the DIGEPESCA seeking information regarding the legality of the lobster referenced in the anonymous facsimile. The director general of the DIGEPESCA sent two letters to the NMFS in response to the inquiry. In his first letter, dated February 12, 1999, the director general described some of the Honduran laws

When, however, a foreign government changes its original position regarding the validity of its laws after a defendant has been convicted, our courts are not required to revise their prior determinations of foreign law solely upon the basis of the foreign government's new position. There must be some finality with representations of foreign law by foreign governments. Given the inevitable political changes that take place in foreign governments, if courts were required to maintain compliance with a foreign government's position, we would be caught up in the endless task of redetermining foreign law.

In this case, the government solicited and received the assistance of the SAG and the DIGEPESCA during the investigation of the legality of the lobster shipments. From the earliest stages of the investigation until after the defendants were convicted, the statements from the SAG were consistent with the government's understanding of the

---

governing the lobster industry, including Resolution 030-95. In a second letter, dated February 25, 1999, the director general confirmed that the lobsters "had been illegally transported in violation of the Fishing Law, the Industrial and Hygienic Sanitary Inspection Regulation for Fish Products and Resolution No. 030-95" and included copies of the laws. The director general further stated the he supported all efforts "to legally prosecute natives or legalized Americans that violate the articles of the Lacey Act." The letter was copied to the minister and vice minister of the SAG. In addition, SAG Minister Guillermo Alvarado Downing confirmed in an affidavit that Secretary General Paz could "provide the necessary advice about and explanation of the enforcement and validity of Honduran laws, and especially the fisheries laws enforced by this Ministry." Thus, it is clear that the government conducted its investigation properly through the Honduran officials who were responsible for interpreting, enforcing, and applying the fishing laws of Honduras.

laws. After the defendants were convicted, however, certain events in Honduras induced the Honduran government to refute its original statements. The newly issued statements and opinions of Honduran officials, however, do not persuade us that the district court erred in its determination that the Honduran laws at issue were valid and enforced during the time period covered by the indictment.

By our decision today, we do not mean to impinge upon any foreign government's sovereignty. Honduras has every right to invalidate and repeal the laws at issue in this case. The district courts and the government of the United States, however, have the right to rely upon the Honduran government's original verifications of its laws. We must have consistency and reliability from foreign governments with respect to the validity of their laws. Otherwise, there never could be any assurance when undertaking a Lacey Act prosecution for violations of foreign law that a conviction will not be invalidated at some later date if the foreign government changes its laws. Acceptance of the Honduran government's current interpretation of its laws as determinative of the validity of the laws would set the foundation for future Lacey Act defendants to seek postconviction invalidation of the underlying foreign laws. Although such is not the case here, it is not difficult to imagine a Lacey Act defendant in the future, who has the means and connections in a foreign country, lobbying and prevailing upon that country's officials to invalidate a particular law serving as the basis for his conviction in the United States. Such a scenario would completely undermine the purpose of the Lacey Act. There would cease to be any reason to enforce the Lacey Act, at least with respect to foreign law violations, if every change of position by a foreign government as to the validity of its laws could invalidate a conviction.

Thus, we conclude that the postconviction shift in the Honduran government's position regarding the validity of its

laws is not determinative as to whether the laws were valid at the time the lobsters were imported into the United States. We now examine each law in turn to determine whether each was valid during the time period covered by the indictment.

Resolution 030-95

Resolution 030-95, the law establishing the 5.5-inch size limit for lobsters, provides for sanctions for noncompliance with its terms. *See* Resolucion No. 030-95, Dec. 5, 1995, La Gaceta, Jan. 4, 1996. The defendants argue that Resolution 030-95 never was a binding law,[26] because it was not issued in accordance with Honduran constitutional procedure.

Furthermore, throughout the investigation and after the trial, Honduran officials repeatedly confirmed that Resolution 030-95 was a valid and binding law. The director general of the DIGEPESCA confirmed the size limit requirement in three separate letters. Resolution 030-95 was cited by several Honduran officials as a valid and binding law during two trips to Honduras by NMFS agents, one before and one after the defendants' trial. Secretary General Paz testified as to the validity of Resolution 030-95 during the pretrial foreign law hearing. Thus, it is evident that

---

[26] This argument is inconsistent with McNab's prior acknowledgment of the validity of the 5.5-inch size limit and his instructions to his lobster boat captains to abide by it. In a letter to his fishing boat captains, dated October 28, 1999, McNab advised that "[i]t is absolutely prohibited to capture lobsters under the size allowed by the Law and/or eggbearing lobsters. . . . You will only keep those lobsters measuring more than 5.5-inches." A second letter was sent to the fishing boat captains by the general manager of McNab's company on July 31, 2000. The captains were "reminded to comply with the sizes and weights that the lobster caught must fulfill, which is 5 1/2 inches."

Resolution 030-95 was considered binding by those responsible for its enforcement.

The basis for the defendants' argument that Resolution 030-95 never was a valid law is an opinion from the Honduran Court of the First Instance of Administrative Law.[27] In May of 2001 the Honduran administrative law court found that Resolution 030-95 had been promulgated through an incorrect procedure and ordered that the resolution was "entirely voided, *but this is only for purposes of [its] annulment and future inapplicability*: This Resolution does not confer any right to claims." R. at 5:324 Ex. B (emphasis added). Subsequently, the Honduran Court of Appeals for Administrative Law affirmed the lower court's decision invalidating Resolution 030-95. R. at 1 Supp.:415 Ex. C.

There are conflicting opinions from Honduran officials as to the effect of the court's annulment of Resolution 030-95 on the defendants' convictions.[28]

---

[27] After the trial in the district court had begun, McNab filed a petition in the Honduran Court of the First Instance of Administrative Law, seeking to annul Resolution 030-95 on the grounds that the resolution had not been signed by the Honduran president before being issued and that it should have been issued as a decree rather than as a resolution.

[28] The affidavit of the assistant attorney general of Honduras indicates that the decision annulling Resolution 030-95 does not apply retroactively and does not legalize the shipments of undersized lobsters retroactively. The attorney general of Honduras, however, offers an alternative explanation for the prospective language in the court's decision that favors the defendants. He contends that Resolution 030-95 was annulled ab initio, that it never was a valid law and, therefore, cannot serve as a basis for the defendants' convictions. Although the dissent accepts his explanation that

While we certainly respect the opinions of the Honduran officials, we base our determination that Resolution 030-95 was valid during the time period covered by the indictment upon the Honduran court's opinion. The Honduran court clearly stated that Resolution 030-95 was annulled for prospective application only, and we assume that the Honduran court meant what it said. Although we recognize that Resolution 030-95 is now invalid, we see nothing in the Honduran court's opinion to indicate that the nullification should be applied retroactively.[29] In fact, the decision

---

Resolution 030-95 never was binding and that the prospective language merely protects the Honduran government from civil liability, we believe that the attorney general is extracting meaning from the Honduran court's decision that is not supported by the language of the opinion. In addition, although a report from the Honduran national human rights commissioner advised that Secretary General Paz's testimony be disqualified as legal error and that Resolution 030-95 be declared void retroactively, a subsequent meeting between the commissioner and an NMFS agent revealed that the commissioner was unaware of the factual background of the prosecution at the time he rendered his report. Furthermore, the commissioner said that he felt "pressured" by McNab's representatives to issue a quick decision.

[29] We note that with the permission and approval of the minister of the SAG, both Secretary General Paz and SAG Legal Advisor Jose Bernardo Torres Umanzor confirmed that the Honduran government continued to enforce Resolution 030-95 as a valid and binding law while the appeal was pending before the Honduran Court of Appeals for Administrative Law. They also explained that any annulment of Resolution 030-95 would not be retroactive, because the Honduran court's judgment pertained to an administrative matter, not a criminal matter.

mandates prospective application.[30] Thus, Resolution 030-95 is a valid predicate for the defendants' convictions.[31]

McNab points to the statement of SAG Minister Downing to support his assertion that aside from Article 96 of the Honduran Constitution, the Honduran appellate court's decision mandates retroactivity. Downing bases his opinion that the invalidation applies retroactively upon an inexplicable assertion that the Honduran appellate court's opinion "expands" the Honduran Court of the First Instance of Administrative Law's opinion and somehow mandates retroactivity. We, however, find nothing in the Honduran

---

[30] We briefly address the defendants' argument that the Honduran Constitution requires that the invalidation of Resolution 030-95 be applied retroactively in this case. Article 96 of the Honduran Constitution provides, "The Law does not have retroactive effect, except in penal matters when the new law favors the delinquent or the person that is prosecuted." Constitucion de la Republica de Honduras art. 96. Article 96, however, has no application in this case. The reason that we look to foreign law in Lacey Act prosecutions is to determine what constitutes illegal conduct. At the time of the defendants' conduct, harvesting lobsters under 5.5 inches was a violation of Resolution 030-95. The fact that Honduras now may not hold the defendants liable for past shipments that contained undersized lobsters does not change the fact that those shipments violated then-valid Honduran laws and the Lacey Act.

[31] The dissent concedes that reversal of the defendants' convictions is not required if the invalidation applies prospectively. Further, the dissent concedes that "the language of the Honduran Court could be construed to mean prospective application only." We conclude that the language of the Honduran court opinions requires prospective application only and that nothing else in the record mandates otherwise.

appellate court's decision requiring retroactivity, because the Honduran appellate court issued a summary affirmance.

The government's evidence, both pretrial and posttrial, indicates that because the Honduran court's judgment about Resolution 030-95 involved an administrative matter and not a criminal matter it has no retroactive effect. Although McNab's evidence, submitted postconviction, may indicate a contrary view, it is clear that a consensus has not been reached on this issue in Honduras. Nevertheless, we still must determine the best reading of the laws. *See United States v. Mitchell, 985 F.2d 1275, 1281 (4th Cir. 1993)* ("Perhaps, as is the case with many of our own laws, a consensus has not yet been reached in Pakistan. Yet we are charged with determining the best reading of the laws.").

In our judgment, the government's evidence and a plain language reading of Article 96 require us to find that Article 96 does not apply in this case and that the invalidation of Resolution 030-95 applies prospectively. Article 96 expressly provides that "the Law does not have retroactive effect." This is consistent with the Honduran court's judgment that the invalidation of Resolution 030-95 be applied prospectively. The only exception under Article 96 is a "new law" in criminal matters.

McNab's view requires a finding that "[t]he Law" in Article 96 applies to judicial declarations of the invalidity of an existing law as opposed to the enactment or promulgation of a "new law." The language of Article 96 does not support this view. In the second clause of the sentence, Article 96 specifically refers to a "new law" that favors the accused. It does not refer to the absence of a law or a declaration that a law is invalid.

Regulation 0008-93 was issued pursuant to Decree 40 and required that lobsters be inspected and processed in Honduras prior to exportation. *See* Acuerdo No. 0008-93, Jan. 13, 1993, La Gaceta, Apr. 7, 1993. In January of 1995

the Congreso Nacional enacted Decree 157-94, which repealed and replaced several existing statutes, including Decree 40. *See* Decreto No. 157-94, Nov. 15, 1994, La Gaceta, Jan. 13, 1995. In December of 1999 the Secretaria de Recursos Naturales y Ambiente issued Accord 1081-99, an administrative regulation that contained updated inspection and processing requirements and expressly repealed Regulation 0008-93. *See* Acuerdo No. 1081-99, Sept. 23, 1999, La Gaceta, Dec. 2, 1999.

On the basis of their posttrial research, the defendants argue that Regulation 0008-93 was repealed along with Decree 40 in 1995.[32] They contend that the repeal of Decree 40 operated to repeal the regulations promulgated under it, including Regulation 0008-93. The defendants argue that the automatic repeal of regulations triggered by the repeal of the statute under which those regulations were promulgated is a longstanding principle of Honduran law, and they rely upon a recent interpretive decree by the Congreso Nacional for support. *See* Decreto No. 198-2001, Nov. 1, 2001. That decree expressly provides that "the express total or partial repeal of a law leaves without legal value or effect the general regulations and the specific regulations totally . . .

---

[32]The defendants also raise a second challenge with respect to the propriety of Regulation 0008-93 as a Lacey Act predicate. They argue that even if Regulation 0008-93 were not repealed until 1999 it falls outside the scope of the Lacey Act, because it is not a law regulating the taking, possessing, transportation, or sale of wildlife. We disagree. When Congress amended the Lacey Act in 1981, it expressly stated that the Act covers laws "relating or referring to fish or wildlife or plants." S. Rep. No. 97-123, at 5; *see also United States v. Lewis, 240 F.3d 866, 869 (10th Cir. 2001)* (per curiam); *Lee, 937 F.2d at 1392*. Accordingly, our review of the regulation confirms that it unquestionably relates to fish and is within the scope of the Lacey Act.

that the Executive Branch through the respective Secretariat of State has issued to implement the provisions of the repealed Law . . . ." *Id.*

We are unconvinced by the defendants' argument for two reasons. First, we question why there is a need to issue an interpretive decree if the concept of an automatic repeal of regulations is such a longstanding principle of Honduran law.[33] Second, Regulation 0008-93 was repealed *expressly* by the Secretaria de Recursos Naturales y Ambiente in 1999 when it issued new rules for lobster fishing. There would be no need to repeal Regulation 0008-93 expressly in 1999 if it was repealed automatically in 1995.

Furthermore, the Honduran Civil Code provides support for the proposition that Regulation 0008-93 remained in effect until the express repeal in 1999.[34] According to the

---

[33] The evidence in the record contradicts this assertion and establishes that the Honduran government regarded the hygiene regulation as valid between the time of the 1995 repeal of Decree 40 and the 1999 express repeal of Regulation 0008-93. The March of 2000 statements by the Honduran legal advisors described the processing requirements mandated by Regulation 0008-93 *and* Decree 157-94, the very same decree that the defendants contend repealed Regulation 0008-93 in 1995. At the pretrial foreign law hearing, the SAG's Secretary General Paz testified as to the validity of the processing and inspection requirements. Secretary General Paz stated that Regulation 0008-93 continued to be enforced in Honduras, because it was only tacitly repealed in 1995.

[34] Not only does the Honduran Civil Code support the district court's determination that Regulation 0008-93 was valid during the time period covered by the indictment, the defendants' interpretation leads to an illogical result. An automatic repeal of Regulation 0008-93 in 1995 would have

Civil Code, a law may be repealed totally or partially by another law. Codigo Civil art. 42. Such a repeal may be express or tacit; it is express when the new law expressly provides that it repeals the previous one, and it is tacit when the new law's provisions cannot be reconciled with the previous law. Codigo Civil art. 43. Significantly, a "tacit repeal leaves in effect in the previous law anything not in conflict with the provisions of the new law, even though both versions may cover the same matters." Codigo Civil art. 44. The 1995 decree did not repeal Regulation 0008-93 expressly, which means that any repeal of the regulation was tacit. As Regulation 0008-93 did not conflict with the 1995 decree, it remained in effect until the 1999 regulation expressly repealed it. Thus, the district court properly determined that Regulation 0008-93 was valid during the time period covered by the indictment.

Article 70(3)

Article 70(3) of the Fishing Law prohibits the harvesting or destruction of lobster eggs. *See* Decreto No. 154, May 19, 1959, La Gaceta, June 17, 1959. The defendants argue that Article 70(3) does not prohibit the destruction or collection of lobster eggs for profit. They contend that the district court's interpretation that the law prohibited the harvesting of the egg-bearing species themselves was erroneous.[35]

---

created a four-year window during which there were no sanitary regulations for lobster fishing. This would have been an odd result considering that the 1995 decree issued by the Congreso Nacional was intended to strengthen the hygiene requirements.

[35] Lobsters have swimming legs on their abdomens called swimmerets, which female lobsters use to hold eggs. 7 *The New Encyclopedia Britannica* 430 (15th ed. 1998). The swimmerets of some of the lobsters in the seized shipment were clipped off and the eggs were removed.

We fail to see how Article 70(3) can be read other than to prohibit the destruction or harvesting of the eggs of lobsters for profit. The destruction of eggs to sell the female lobsters appears to be a clear violation of Article 70(3), which provides for punishment by fine or imprisonment to "[t]hose who destroy or harvest the eggs, or the offspring of fish, chelonians or other aquatic species for profit." *Id.* The defendants' argument regarding the legality of capturing egg-bearing lobsters is contrary to the plain language of Article 70(3).[36]

The defendants also argue that Article 70(3) was repealed retroactively in February of 2001 by the enactment of Decree 245-2000 by the Congreso Nacional. As stated above, our duty with respect to each of the Honduran laws is to determine whether they were valid during the time period covered by the indictment. Whether the 2001 amendment to Article 70(3) repealed the prohibition against harvesting egg-bearing lobsters for profit is not our concern. Thus, we reject the defendants' argument that Article 96 of the Honduran Constitution requires that we apply the 2001 amendment retroactively for the reasons stated with respect to Resolution

---

[36] Not only is their interpretation contrary to the plain language of Article 70(3), it directly conflicts with McNab's own instructions to his boat captains that harvesting egg-bearing lobsters was prohibited. The October 1999 letter from McNab to his fishing boat captains provided that "[i]t is absolutely prohibited to cut the pleopods of the Lobsters to remove any eggs . . . . All the lobsters with eggs will be returned to the sea without any exception. For that purpose, you will have to instruct the fisherman who work in the boats on how to identify them." The letter from McNab's general manager to the captains in July of 2000 instructed that they may "not capture lobsters that are in their reproductive phase or gravid lobsters (with eggs). It is absolutely prohibited to remove egg sacs from the lobster to remove its eggs . . . ."

030-95. Accordingly, we conclude that Article 70(3) was a proper predicate for the defendants' convictions.

Thus, the defendants' newfound support from the Honduran government does not change the fact that during the time period covered by the indictment, the laws at issue were valid. Although we certainly respect the Honduran government's position, the recent developments since the trial and the newly rendered opinions from Honduran officials cannot turn what were illegal lobster shipments into legal lobster shipments retroactively.

Having determined that Resolution 030-95, Regulation 0008-93, and Article 70(3) were valid during the time period covered by the indictment and thus were proper predicates for the Lacey Act charges, we now briefly address the defendants' remaining issues on appeal. The defendants argue that (1) the district court abused its discretion by excluding evidence at trial relating to McNab's "knowledge" of Honduran law; (2) the district court made several errors with respect to the jury instructions; (3) there was insufficient evidence to support the jury's verdicts; and (4) the district court erred in failing to postpone Schoenwetter and Blandford's sentencing and in determining the length of their sentences. After thoroughly reviewing the record, we find that these issues are without merit.

CONCLUSION

Thus, we conclude that the Honduran laws used as the underlying predicates for the defendants' convictions fall within the scope of the Lacey Act and were valid and legally binding during the time period covered by the indictment. The remaining issues raised by the defendants were decided properly by the district court or are without merit. We therefore AFFIRM the defendants' convictions and sentences.

DISSENTBY: FAY, FAY

DISSENT: FAY, Circuit Judge, dissenting:

The majority opinion is both thorough and scholarly in dealing with this complicated matter. With some hesitation, I most respectfully dissent from that portion of the majority opinion upholding the validity of Honduran Resolution 030-95. The theme of the majority opinion is that the government of Honduras has "shifted" its position. The question for determination is phrased as being complicated by the changed or new position of the Honduran government. The majority then decides this issue within the framework of whether or not we are free to follow the Honduran government's original position.

Try as I might, I simply cannot read this record that way. There was never unanimity nor agreement concerning the validity of Resolution 030-95. That question was hotly contested. But, throughout the course of this litigation, the resolution of that question was based upon the weight given by the trial judge to the evidence presented by the U.S. government during a pretrial hearing on foreign law. At that time, the Honduran courts had not ruled. Now they have.

It should come as no surprise to anyone that some of the "expert" witnesses were correct and some were wrong. Nor should we be surprised that it was the courts of Honduras which ultimately answered the question. That is the way it works in Honduras and in the United States of America. Simply stated, it is my position that we are bound by the rulings of the Honduran courts declaring Resolution 030-95 null and void. This being the case, the defendants convictions must be reversed since one of the Honduran laws relied upon by the jury in finding guilt has now been found to be a nullity.

Most respectfully, I disagree with the majority's conclusion that the government of Honduras has changed its position. Government officials testified on both sides of the

issue before the district court. There was no one official voice for the government of Honduras. But, there is now. The Honduran courts have ruled and the Honduran Embassy has filed an *amicus* brief advising us of the Honduran government's position -Resolution 030-95 is null and void and was so during the critical time charged in the second superceding indictment. That is the only official government position I am aware of in this record.

We all agree that the key component to any alleged *Lacey Act § 3372(a)(2)(A)* violation is the commission of a predicate State or Foreign offense concerning fish or wildlife. We further agree that, for purposes of these appeals, three predicate offenses are pertinent. Of those three, my concern goes to Resolution 030-95 concerning the minimum legal size of harvested lobster tails.

As the majority correctly notes, the district court properly conducted a foreign law hearing to determine whether Resolution 030-95 was, in fact, a valid Honduran law during the time period charged in the second superseding indictment. Over the testimony of an expert in Honduran law, a Honduran law professor and former Ministry of Justice, the then Attorney-General of the Republic of Honduras, the Honduras Bar Association and others, the District Court, based upon the testimony of one lower-level Honduran government official, Liliana Paz, Secretary General of the Ministry of Agriculture and Livestock, concluded that Resolution 030-95 was a valid law.

Following trial and conviction, defendant David Hensen McNab ("McNab") challenged the validity of Resolution 030-95 in the Court of First Instance of Administrative Law in Honduras ("Honduran Court"). That challenge was opposed by an attorney representing the government of Honduras. At the conclusion of that proceeding, the Honduran Court declared Resolution 030-95 to be null and

void. Specifically, on May 23, 2001, the Honduran Court found:

> First: . . . [Resolution 030-95] [does] not conform to law by virtue of having violated the legal code at the time [it] [was] issued. Second: the challenged [Resolution] . . ., No. 030-95 of December 5, 1995, [is] entirely voided, but this is only for purposes of [its] annulment and future inapplicability: This Resolution does not confer any right to claims.

R. at 5:324 Ex. B. The Honduran Court premised its decision on the fact that Resolution 030-95 was not properly issued by the President of the Republic of Honduras and authorized by the proper Secretary or Under Secretary of State as is required under Honduran law. Subsequently, the government of Honduras appealed the Honduran Court's ruling to the Court of Appeals of Administrative Matters ("Honduran Court of Appeals") which on October 11, 2001, confirmed the correctness of the Honduran Court's decision.

The rulings of the Honduran courts do raise a second question as to whether or not the ruling applies retroactively. As quoted above, the language of the Honduran Court could be construed to mean prospective application only. That is the position the majority takes in this case. Therefore, the critical question before this court is whether or not Resolution 030-95 was valid at the time of the defendants' conduct as charged in the second superceding indictment. This question is determined by whether the invalidation of Resolution 030-95 is to be applied retroactively or prospectively. If the invalidation of Resolution 030-95 is to be applied retroactively, it seems to me that reversal of the defendants' convictions is mandated. If invalidation is to be only applied prospectively, reversal is not required.

We all agree that we review a district court's interpretation of foreign law *de novo*. *United States v. Gecas*,

120 F.3d 1419, 1424 (11th Cir. 1997) (en banc). We also agree that under certain circumstances an underlying Lacey Act predicate offense need not be independently prosecutable. *See United States v. Borden, 10 F.3d 1058 (4th Cir. 1993)* (affirming Lacey Act conviction where the enforcement of underlying predicate state law was barred by applicable state statute of limitations but not by federal statute of limitations). However, *Borden*, or any similar case, is fundamentally different than this case where the predicate substantive criminal law supporting the Lacey Act convictions cannot be enforced, not because of a procedural bar, but because the law itself has been invalidated by the courts through nullification. In other words, what was thought to be a crime turns out to not be a crime under Honduran law. It bears noting that had U.S. law been implicated, reversal of the convictions would not be in question and the case would easily be resolved in the defendants' favor. In the United States, where a substantive criminal law is subsequently declared to be invalid by the courts, any convictions thereon would be reversed.

Further troubling is the fact that as a matter of Honduran constitutional law, these defendants could not be tried and convicted for violation of Resolution 030-95 in Honduras. In Honduras, as in the United States, any criminally enforceable statute later declared to be invalid by the courts is retroactively applied to any criminal defendant. Article 96 of the Honduran Constitution specifically provides, "the Law does not have retroactive effect, except in penal matters when the new law favors the delinquent [(i.e., criminally convicted)] or the person that is prosecuted." Constitucion de la Republica de Honduras art. 96.

The majority makes note of Article 96 but simply asserts its inapplicability by concluding that "at the of time the defendants' conduct, harvesting lobsters under 5.5 inches was a violation of Resolution 030-95." As stated above, if the invalidation of Resolution 030-95 is retroactively applied, as

I believe it must be, then at the time of the defendants' conduct, there would not have been a violation of Resolution 030-95. To this point, there are authorities in the record which I find particularly relevant in deciding whether the Honduran Court's invalidation of Resolution 030-95 should be retroactively applied.

We start with the official voice of Honduras in the United States. The country of Honduras, through its Embassy in Washington, D.C., has filed an *amicus* brief stating unequivocally that retroactive application is the law of Honduras. The current Attorney General of the Republic of Honduras, Sergio Zavala Leiva, the National Human Rights Commissioner of the Republic of Honduras, Leo Valladares Lanza, [1] the current Secretary of State of the Offices of Agriculture and Livestock, Guillermo Alvarado Downing and Secretary Downing's subordinate and star U.S. government witness before the district court, Secretary General of the Ministry of Agriculture and Livestock, Liliana Paz, all support the position that retroactive application is required. The only witness presented suggesting that retroactive application is not required is Juan Arnaldo Hernandez Espinoza, an Assistant Prosecutor General of the Public Ministry of the Republic of Honduras.[2] Thus, the

---

[1] Although his opinion was never altered, amended or changed in any manner, the majority notes that a National Marine and Fisheries Service agent who interviewed Commissioner Lanza indicated that Commissioner Lanza revealed that he felt "'pressured' by McNab's representatives to issue a quick decision."

[2] In his opinion, Assistant Attorney General Espinoza ("Espinoza") indicates that there is no retroactive application of the invalidation of Resolution 030-95 because "the sanction to which [the defendants'] conduct applies is based on a measure that originates in the Fishing Law and not in the activity of the Executive Branch." Appellee's Addendum of Foreign Law Materials at tab 1. Upon closer examination, it becomes clear that Espinoza's opinion is premised on the assumption that the Fishing Law, not Resolution 030-95, defines the minimum lobster harvest size. Therefore, invalidation of Resolution 030-95, a resolution

overwhelming evidence before this court is squarely on the side of the retroactive application of the invalidation of Resolution 030-95. I can come to no other conclusion.

As to the appropriate interpretation of the Honduran Court's use of the terms "annulment" and "future inapplicability," Attorney General Leiva provides the most reasoned and reasonable explanation. Attorney General Leiva explains:

> The reason that the laws of Honduras and, in particular, the Court of Administrative Appeals, with its specific language in its judgment, only set forth its future inapplicability is to guarantee the legal security of the State, protecting it from damages and losses that could have been caused by the enforcement of an act that is null and void as a matter of law.
>
> (Leiva Decl. P 8)

Apparently, in Honduras the government may be subject to civil liability for the enforcement of a subsequently declared invalid law. Therefore, in the context of Honduran law, the Honduran Court's language makes sense and simply seeks to limit the government's liability and protect its treasury. The precise language of the Honduran Court supports this interpretation. Following the use of "annulment" and "future inapplicability" is a colon followed by the following illuminating language, "this Resolution does

---

implemented pursuant to the authority of the Fishing Law, is without import and the question of retroactivity is rendered irrelevant. This opinion is mistaken for two critical reasons. Firstly, Espinoza's opinion ignores the fact that, for purposes of U.S. law, the predicate act the defendants were charged with violating is Resolution 030-95, not the Fishing Law. Secondly, Espinoza's opinion ignores the fact that, with regard to minimum lobster harvest size, the Fishing Law is silent and directs such restrictions to be fashioned pursuant to regulation. *See* Decreto No. 154, May 19, 1959, La Gaceta, June 9, 1959, art. 70.

not confer any right to claims." Thus, Attorney General Leiva's explanation, as compared to the other evidence before the court, is most compelling. Furthermore, this court should not interpret Honduran law in a vacuum. As stated above, in Honduras, Article 96 of the Honduran Constitution retroactively applies the invalidation of Resolution 030-95 to any criminal defendant. The Honduran Court certainly would have been aware of the existence and effect of Article 96 when crafting the language and scope of its opinion and this court should seek to interpret the Honduran Court's opinion in its proper context.

The majority advances the important principle of finality in support of its decision. As a general proposition, I agree that finality is an important aspect of American jurisprudence. However, in the context of an invalidated substantive criminal law which forms the basis of a criminal prosecution or conviction, reliance on the concept of finality is misplaced. As stated above, under both U.S. and Honduran law, retroactive application is warranted for a criminal defendant charged or convicted of a subsequently declared invalid criminal statute. *Cf., Davis v. United States, 417 U.S. 333, 346, 94 S. Ct. 2298, 2305, 41 L. Ed. 2d 109, 119 (1974)* (in the context of a petition for relief pursuant to *28 U.S.C. § 2255*, concluding that if conviction and punishment are for an act not made criminal by the law, "[t]here can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice . . . ." (Internal quotations omitted)).

For emphasis, I repeat again that the majority opinion discusses extensively and is strongly critical of the changed position or shift by the Honduran government. While that terminology may give comfort to the majority, it is simply

not accurate. While various government officials gave conflicting opinions regarding the validity of Resolution 030-95, this was before the Honduran courts ruled. The Honduran

courts have now ruled and both agree, Resolution 030-95 was null and void. The majority casts this in an unfavorable light akin to something sinister. In my opinion, this is no different than what occurs routinely in our country. Attorneys, and even the Attorney General of a state or the United States, often express opinions about statutes only to find that after a court challenge, they were wrong. That is all that happened here. Some of the experts were right; some were wrong. But, the Honduran courts have now spoken and there is simply no doubt that Resolution 030-95 is null and void as if it never existed.

To suggest that the newly issued statements and opinions of Honduran officials do not carry the weight of the earlier statements is a strange position for members of the judiciary. The so-called "shift in position" is the result of lawful litigation within the courts of a foreign nation. I think we would be shocked should the tables be reversed and a foreign nation simply ignored one of our court rulings because it caused some frustration or inconvenience.

The evidence in this case supports the conclusion that the defendants were guilty of knowingly violating the law at the time they harvested, shipped and sold these "shorts." The prosecutors did their very best to establish the law of Honduras which is essential under the Lacey Act. It is easy to understand the frustration inherent in this present situation. But, the Lacey Act, by its very terms, is dependent upon the laws of a foreign sovereign. In this situation, we do not control the outcome of challenges made to those underlying laws. No one has suggested that McNab was not exercising his lawful rights as a citizen of Honduras or that the courts of Honduras were without authority to issue the decisions they did.

Most reluctantly, I therefore dissent.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF
AMERICA

v. CRIMINAL ACTION
NO. 1:00-00079-(1, 2, 3 & 4)-RV

DAVID HENSON
MCNAB, ROBERT D.
BLANDFORD,
ABNER
SCHOENWETTER,
DIANA H. HUANG

ORDER

This matter is before the court on the following documents:

1. "Motion for Pretrial Determination of Foreign and State Law Pursuant to Fed. R. Crim. P. 12(b) and 26.1 and Memorandum in Support Thereof," (doc. 46), together with evidentiary materials, (in redwell), filed by the government;

2. "Motion to Dismiss Counts One through Twelve and Counts Twenty-Eight Through Forty-Three of the

Indictment," (doc. 53), filed by defendant David Henson McNab:[37]

3. "Opposition To Defendant McNab's Motion to Dismiss Counts One Through Twelve and Counts Twenty-Eight Through Forty-Three of the Indictment," (doc. 87), filed by the government;

4. "Supplement/Amendment to . . . Motion for Pretrial Determination of Foreign and State Law and Memorandum in Support Thereof," (doc. 100), filed by the government;

5. "Notice of Intent to Offer in Evidence Foreign Records," (doc. 105), filed by the government;

6. "Response to the Government's Motion for Pretrial Determination of Foreign and State Law," (doc. 110), filed by defendant McNab;

7. "Renewed Motion for Evidentiary Hearing on Government's Motion for Determination of Foreign Law" (doc. 113), filed by defendant McNab;

8. "Opposition to Pretrial Determination of Foreign and State Law," (doc. 115), together with a supporting brief, (doc. 116), filed by defendant Robert D. Blandford;

9. "Notice of Intent to Offer in Evidence Foreign Records," (doc. 117), filed by defendant McNab;

---

[37] The motion to dismiss is premised on multiple grounds, including the contention that "the transactions are not violative of any valid law, treaty, or regulation in Honduras." Mot. To Dism., ¶ 2.

10. "Reply to Defendant [McNab's] Response to Motion for Pretrial Determination for Foreign and State Law," (doc. 122), filed by the government;

11. "Notice of Intent to Offer in Evidence Foreign Records," (doc. 125), filed by the government;

12. "Motion to Dismiss the Superseding Indictment," (doc. 151), filed by defendant McNab,

13. "Brief in Support of ... Response to the Government's Motion for Pretrial Determination of Foreign and State Law and In Support of ... Motion to Dismiss the Superseding Indictment," (doc. 178), filed by defendant McNab;

14. "Summary Brief on Pretrial Determination of Foreign and State Law," (doc. 182), filed by the government;

15. "Summary of Significant Evidence Supporting its Position Regarding the Determination of Foreign Law," (doc. 185), filed by the government;

16. "Supplemental Opposition to Government's Motion for Determination of Foreign Law and In Support of Defendant McNab's Motion to Dismiss," (doc. 186). filed by defendant McNab:

17. "Notice of Filing of Expert Supplementary Affidavit," (doc. 194), filed by defendant McNab;

18. "Supplemental Brief Regarding Foreign Law Issue," (doc. 199), filed by defendant McNab; and

19. All exhibits admitted during the September 27-29, 2000 hearing.

INTRODUCTION

In this criminal proceeding, defendants are charged with, *inter alia*, conspiring to violate and/or violating the Lacey Act, 16 U.S.C. § 3371 *et seq.* *Inter alia*, the Lacey Act makes it unlawful "to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish . . . taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law." 16 U.S.C. § 3372(2)(A). In this case, the government contends that defendants violated Honduran law in various ways when they imported or conspired to import spiny lobster tails and shrimp on multiple occasions over a five-year period.[38] So that the

---

[38] The second superseding indictment also charges that some of the defendants violated the Lacey Act by importing shrimp and spiny lobsters in violation of Florida law, and the government has requested the court to "determine" the relevant Florida law. As stated on the record during the September 27-29 hearing, none of the parties contest the validity or scope of the applicable Florida law as set forth in the government's motion. There being no dispute between the parties regarding the relevant Florida law, the court concludes that Florida haw prohibits:

> 1. the harvesting or possessing of any spiny lobster (*Panulirus argus*) with a tail measurement less than 5 1/2 inches.
>
> 2. the harvesting or possessing of egg-bearing spiny lobster and/or the possessing of spiny lobster or spiny lobster tails from which eggs, swimmerettes, or pleopods have been removed or stripped. The practice of stripping or otherwise molesting egg-bearing spiny lobster in order to remove the eggs is also prohibited.
>
> 3. any person, firm, or corporation to deal in any saltwater products, including lobster tails, without first paying for and procuring a saltwater products dealer license. It is unlawful to sell, deliver, ship, or transport any saltwater products without all invoices of such

court can adequately charge the jury, the government requests the court to "determine" that Honduran law:

> 1) prohibits one to harvest, process, or sell (including the sale/exportation of such lobster to a buyer outside Honduras for which payment is, made directly or indirectly to a Honduran citizen or company) any lobster the tail of which measures less than five and one-half (5 1/2) inches in length;
>
> (2) prohibits one to harvest lobster commercially between March 16 and July 31 of years 1995, 1996 and 1998. In all other years, the closed season runs from December 1 through April 30.
>
> (3) prohibits one to harvest shrimp commercially between February 1 and June 30 of each year;
>
> (4) prohibits one to harvest or destroy the eggs of any aquatic species, including spiny lobster, for profit; This includes a prohibition against the tearing out or, in any other way separating, the eggs from the female lobster, for profit;
>
> (5) prohibits one, commencing on the sixth day after the beginning of the respective lobster or shrimp closed season, to transport, sell, store, or refrigerate lobster and/or shrimp unless the lobster and shrimp were harvested prior to the first day of the closed season;

---

products having thereon the wholesale dealer license number.

(6) requires lobster find shrimp fishermen to dock their vessels and unload their catch in a Honduran port prior to exportation. This duty may be fulfilled by the fishermen by either docking the vessel that caught the lobster or shrimp or transferring the catch to a licensed ship that in turn docks and unloads the catch;

(7) requires that businessmen and those who use any kind of heat for fishing activities or transportation of any fish species protected by law, including lobsters, report in writing to the governmental authorities the outcome of their fishing trip. The captain of any fishing boat has to report the departure and arrival of the boat to governmental authorities, pointing out places where the fishing was done, and the species and amount caught.

(8) prohibits one to export lobster without first processing/packing that lobster in Honduras which includes the packing of lobster into boxes that have been paraffined and labeled with (a) the business "name of the firm that makes the product, (b) the weight, (c) that it was "inspected and approved of by the Honduran Ministry of Natural Resources" and (d) the number assigned to the processing company.

The government contends that these points of law are mandated by certain Honduran statutes, regulations, and resolutions. Except as noted below, defendants do not contest the government's interpretation of the relevant Honduran statutes, regulations, and resolutions, rather, defendants' primary contention is that the resolutions upon which the government relies do not satisfy the Honduran constitutional

requirements for resolutions and, therefore, are null and void. The parties' contentions and supporting evidence are discussed *infra*.[39], [40]

Over a 2 1/2-day period, the court conducted an evidentiary hearing on the Honduran law issues. Additionally, the court has reviewed the voluminous evidentiary material submitted by the parties before, during, and after the hearing. After due consideration, the court makes the following determinations of foreign law pursuant to 18 U.S.C. § 3505(b)[41] and Fed. R. Crim. P. 12(b)[42] and 26.1.[43]

---

[39] Defendants had asserted that they could not be indicted under the Lacey Act when the underlying foreign law provides only civil penalties or when the foreign government has not prosecuted them under the criminal penalties. Based on the reasons and authorities cited by the government in its briefs, the court previously denied defendants' motion to dismiss to the extent that it was predicated on either of these two grounds.

[40] The government and defendant McNab have submitted a tremendous amount of evidentiary material regarding Honduran law. Given the time constraints on the court, the court cannot possibly address each item of evidence in this written order. Nevertheless, so the record is clear, the court notes that it has carefully reviewed all of the materials submitted in English.

[41] 18 U.S.C. § 3505 provides:

> At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record or regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such a motion before trial shall constitute waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

[42] Fed. R. Crim. P. 12(b) provides, *inter alia*:

DISCUSSION

Point of Law 1—Prohibition of harvesting lobster less than 5 1/2 inches in length

The government relies on Resolution No. 030-95 (December 5, 1995) to establish that Honduras law prohibits the harvest and sale of lobster less than 5 1/2 inches in length. That resolution provides in relevant part:

> For the capture of lobster:
>
> d) The minimum size for the capture of lobster is 5.5 inches or 14.5 centimeters of abdominal length.

Resolution No. 030-95, Third Provision

Point of Law 2—Closed season for harvesting of lobster

Point of Law 3—Closed season for harvesting of shrimp

The government relies on Decree No. 154, The Fishing Law (May 19, 1959), Chapter V, Article 41, and Resolutions No. 001-95 (January 14, 1995), No. 030-95

Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion.

[43] Fed. R. Crim. P. 26.1 provides:

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(December 5, 1995), and No. 031-97 (December 17, 1997), to establish that Honduras law prohibits the harvest of lobster and shrimp during closed seasons. The Fishing Law provides in relevant part:

> The closed season for fishing for shrimp and lobster is fixed as the period between 1 December and 30 April of each year.

The Fishing Law, Chapter V, Article 41.

The three resolutions provide in relevant part:

> FIRST: To establish closing season annually for the capture of Shrimp [and] Lobster . . . in the Atlantic Ocean, during the following periods
> a) Shrimp, from the 1st of February to the 30th of June.
> b) Lobster, from the 16th of March to the 31st of July.

Resolution No. 001-95 (establishing the closed season for the year 1995).

> FIRST: To establish closing season annually for the capture of all species of shrimp [and] lobster . . . in the Atlantic Ocean and in the coastal lagoon system, during the following periods:
> a) Shrimp, from the 1st of February to the 30th of June.
> b) Lobster, from the 16th of March to the 31st of July.

Resolution No. 030-95 (establishing the closed season for the year 1996).

> FIRST: To establish closing season for the capture of shrimp [and] lobster . . . in the Caribbean Sea and in the coastal lagoon system, during the

following time periods: a) Shrimp, from the 1st of February to the 30th of June 1998.
b) Lobster, from the 16th of March to the 31st of July 1988.

Resolution No. 031-97 (establishing the closed season for the year 1998).

The government established that the resolutions were issued by the Honduran Minister of the Department of Agriculture and Livestock and were duly published in *La Gaceta*, the official publication of the Republic of Honduras.

Defendants do not dispute the contents of the three resolutions upon which the government relies to establish Points of Law 1, 2, & 3; rather, they contend that the resolutions are null and void. To support their contention, defendants rely upon a number of legal opinions which the court has carefully reviewed.

Dr. Saul Litvinoff, a professor of law at Louisiana State University, and Efrain Moncada Silva, a professor at the National Autonomous University of Honduras and licensed member of the Honduran bar, testified that the resolutions do not meet the requirements of the Honduran Constitution in order to have "a general binding effect." Aff. of Litvinoff, p. 6. Specifically, Prof. Litvinoff testified that under Articles 245 and 248 of the Honduran Constitution, to be valid and binding, the documents must be 1) "issued in the form of a regulation, 2) "signed by the President and countersigned by the departmental secretary, and 3) published in the official form." *Id.* Prof. Salvia testified similarly.

The court has reviewed the cited portions of the Honduran Constitution and disagrees with the professors' interpretation thereof. Article 245 provides:

> The President of the Republic has the general administration of the States. His powers are: to issue accords and decrees and to issue regulating, and resolutions in accordance with law.

Article 248 provides:

> The decrees, regulations, accords, orders, and judgments of the President of the Republic must be authorized by the department secretaries or their undersecretaries in proper cases. If they fail to meet these requirements[,] they shall have no legal force.

As the court understands these two constitutional provisions, the President of the Republic of Honduras is constitutionally authorized to issue regulations and resolutions in accordance with law, and if he issues regulations, they must be authorized by the appropriate departmental secretary. However, these two provisions (which appear to be plain and straightforward) do not state (or even suggest) that the president is the only Honduran official legally authorized to issue a resolution. Buttressing the court's reading of these constitutional provisions are two important facts. First, the government presented unrebutted testimony that other Honduran departments (*e.g.*, communications and banking) had issued resolutions as a means of carrying out the laws governing those industries. Second, the testimony of virtually every witness asked was that everyone in the Honduran fishing industry, including defendant McNab and the government officials in the fishing industry, viewed the resolutions as legally binding. Indeed,

defendant McNab issued memoranda to his boat captains reminding them of the lobster size limits.

Additionally, Liliana Paz, the General Secretary in the Ministry of Agriculture and Livestock (the Honduran department responsible for the fishery management program), testified that that Honduran Ministry most certainly views the resolutions as legally binding. Secretary Paz is a graduate of the National Autonomous University of Honduras and an attorney licensed in Honduras. She is the highest level attorney within the Ministry of Agriculture and Livestock, and her job duties include providing legal advice to "the Minister in matters having to do with legal affairs, institutional communication, [and] international cooperation." Secretary Paz also has experience clerking for one of the Honduran courts. The court finds her to be well-qualified to speak to the issues regarding the validity and contents of the Fishing Law and the related regulations and resolutions. Upon observing her demeanor, the court finds Secretary Paz to be a very credible witness.

In contrast, the court found the testimony of Prof. Silva to be less than credible, as he testified that he had not, as of the date of his in-court testimony, decided whether he was going to charge defendant McNab for his legal services (including his time spent researching, drafting, and testifying).[44] Thus, it appears that this expert witness for the defense intends to charge a fee akin to a contingency fee. As for Professor Litvinoff, the value of his testimony as to what is required under Honduran law is diminished by the fact that he is not a licensed attorney in Honduras. Additionally, unlike Secretary Paz, neither of these gentlemen regularly interpret the fisheries laws, regulations, and resolutions.

---

[44] Professor Silva was not asked who had paid his travel expenses to America for the purpose of testifying in this matter.

The court also notes that the Fishing Law itself specifically contemplates the implementation of resolutions such as those at issue here in furtherance of the Law. The Fishing Law of 1959, Chapter 11, Article 7, provides in relevant part:

> [The Department of Hunting and Fishing] shall be the only authority to resolve, clarify, and decide all questions raised about the conditions that must be satisfied by fisheries products, to permit them to be captured, transported or sold for consumption in the markets and for other industrial uses, and everything related to importation, exportation and licensing to which end it shall announce such resolutions an other measures as it believes necessary for fisheries activities to be as effective as possible.

The Fishing Law of 1959, Chapter 11, Article 7.

Defendants correctly point out that elsewhere in the Fishing Law, "[t]he Executive Branch, through the secretariat of Natural Resources, is the superior authority on fisheries and fisheries-related matters, and therefore, may establish and announce . . . [certain] measures [including those related to closed seasons] through regulations." The Fishing Law, Chapter I, Article 5. After review, the court is unable to reconcile Articles 5 & 7. Faced with this statutory dilemma, the court finds the testimony of Secretary Paz to be critical—namely, that the resolutions are valid, that the Honduran government views the resolutions to be valid, and that the Honduran government has acted in accordance with the resolutions.

One other item of evidence submitted by defendants merits a remark. Defendants have submitted a

one-sentence ruling issued by the Honduras Supreme Court of Justice which defendants characterize as a judicial statement by the high court that resolutions are not law. One of defendant McNab's witnesses (Honduran attorney Maria Letizia De Guillen) recently petitioned the Supreme Court challenging the constitutionality of two of the resolutions at issue before this court. In denying the petition, the high court stated *in toto*:

> Denied the admission of the petition of unconstitutionality interposed by the way of action by attorney MARIA LETIZIA DE GUILLEN because they recur against two administrative resolutions that do not have the character of law and according to article 184 of the Constitution of the Republic: the recourse of unconstitutionality only proceed against the Law by reason of form or content.

After review, this court understands the ruling to be that the Supreme Court of Justice only reviews the constitutionality of a law (*i.e.*, a statute or other form of legislation enacted by the Honduran legislative branch—National Congress) and that it does not determine the constitutionality of any "lesser" documents (*i.e.*, regulations and resolutions issued by the executive branch) notwithstanding that those "lesser" documents, have the binding force or law. According to defendants, the fact that the Supreme Court declined to address the constitutionality of the resolutions because they are not "law" does not equate to a holding by the high court that he resolutions have no binding legal effect. Defendants' argument goes too far and is simply unsupported. Honduran law clearly encompasses many mechanisms which carry the force of law notwithstanding that the mechanism is not denominated as "law" (and thereby subject to review by the Supreme Court of Justice).

Accordingly, the court concludes that the government has met its burden of establishing that Points of Law 1, 2, & 3 (as set forth on page five of this order) are valid and binding under Honduran law.

Point of Law 4—Prohibition of harvesting egg-bearing lobster or the removal of eggs from lobster

The government relies on Decree No. 154, The Fishing, Law (May 19, 1959), Chapter VII, Article 70(3), to establish that Honduras law prohibits the harvest and sale of egg-hearing lobster and the tearing out or separating in any other way the eggs from the female lobster. That law provides in relevant part:

> The following offense shall be punished with [a fine of] THREE HUNDRED LEMPIRAS or THREE HUNDRED DAYS imprisonment:
>
> * * * * *
>
> 3) Those who destroy or harvest the eggs, or the offspring of fish, chelonians, or other aquatic species for profit.

The Fishing Law, Chapter VII, Article 70(3).

Defendants do not contest the validity of the Fishing Law; rather, they argue that Article 70(3) was written to protect the eggs and young of fish, turtles, and other aquatic species which have been placed in *situ*. To this end, defendants rely on Prof. Litvinoff's supplemental affidavit in which he opines that this statutory provision does not bar the severance of the egg-bearing part of a female lobster or the harvesting of egg-bearing lobsters. Moreover, the professor suggests that the provision does not reach the harvesting of any lobsters, for "the Honduran system has always been

specific in its attempts to regulate lobster harvesting activities" and "there is no mention of lobster in this provision."

The court finds that defendants' interpretation of Article 70(3) is strained and unnecessarily limiting. The statutory provision is broadly written and clearly encompasses lobster—which is undisputedly an "aquatic species." Also, there is nothing in the plain language of the provision which indicates that it is limited to eggs in *situ*. Moreover, to read an in *situ* requirement into the statutory provision would render part of the provision an absurdity, for it is difficult to conceive of a situation in which one would destroy eggs in *situ* for profit.

Accordingly, the court concludes that the government has met its burden of establishing that Point of Law 4 (as set forth on page five of this order) is valid and binding under Honduran law.

Point of Law 5—Only lobster and shrimp harvested during open season may be transported, sold, stored, or refrigerated after 6th day of closed season

The government relies on Decree No. 154, The Fishing Law (May 19, 1959), Chapter VII, Articles 28 and 54, to establish that Honduras law prohibits the transport, sale, storage, or refrigeration of lobster and shrimp on or after the sixth day of the closed season unless the lobster and shrimp were harvested prior to the first day of the closed season.

The Fishing Law provides in relevant part:

> The sale and transport of species which are canned, salted, smoked, or prepared by industrial means and were caught prior to the

> start of their respective closed seasons are also authorized at all times.

The Fishing Law, Chapter IV, Article 28.

> The transport and sale of species in closed seasons . . . is permitted until the fifth day after the respective closed season has begun for the purpose of selling off existing quantities which were captured prior to the start of said closed season.

The Fishing Law, Chapter V, Article 54.

Defendants have not challenged this Point of Law or the underlying law from which it is derived. Accordingly, the court concludes that the government has met its burden of establishing that Point of Law 5 (as set forth on page five of this order) is valid and binding under Honduran law.

Point of Law 6—Fishermen must dock, in a Honduran port, the vessel which caught lobster or shrimp and unload catch or transfer the catch to a licensed vessel that in turns docks and unloads the catch in a Honduran port.

The government relies on Decree No. 154, The Fishing Law (May 19, 1959), Chapter VII, Article 30, to establish that Honduras law requires lobster and shrimp fishermen to dock their vessels and unload their catch in a Honduran port prior to exportation. Secretary Paz testified that, although not specifically authorized by the Fishing Law, the Honduran government deemed this requirement to be satisfied by either the docking of the vessel that caught the lobster or shrimp or the transferring of such catch to a licensed ship that in turn docks and unloads the catch in a Honduran port.

The Fishing Law provides in relevant part:

> Fishermen shall be required to dock their vessels and unload their catch in Honduran ports.

The Fishing Law, Chapter IV, Article 30.

Defendants have not challenged this Point of Law or the underlying law from which it is derived. Accordingly, the court concludes that the government has met its burden of establishing that Point of Law 6 (as set forth on page five of this order) is valid and binding under Honduran law.

Point of Law 7—Reporting requirements

The government relies on Decree No. 154, The Fishing Law (May 19, 1959), Chapter VII, Articles 35 & 37, to establish that Honduras law requires businessmen and those who use any kind of boat for fishing activities or transportation of any fish species protected by law, including lobsters, must report in writing to government authorities the outcome of their fishing trip. The captain of any fishing boat must report the departure and arrival of the boat to government authorities, pointing out places where fishing was done and listing the species and amount caught.

The Fishing Law provides in relevant part:

> Businessmen, shipowners, employers, fishermen and sailors, as applicable to each business, boat, ship, or transport of each class dedicated to the fishing or transport of any of the species protected by this Law, are required to give to the respective officials an account or report, in writing, of the results of the fishing or fishing expedition, and to have the merchandise examined to

> verify whether regulatory requirements have been met, and to obtain the statistical data, and to allow their books to be reviewed.

The Fishing Law, Chapter IV, Article 35.

> All fishing boat captains shall report to the appropriate office when they depart for work and when they return, indicating fishing places, species and quantities caught:

The Fishing Law, Chapter IV, Article 37.

Defendants have not challenged this Point of Law or the underlying law from which it is derived. Accordingly, the court concludes that the government from has met its burden of establishing that Point of Law 7 (as set forth on page six of this order) is valid and binding under Honduran law.

Point of Law 8—Inspection, processing, and packing requirements

The government relies on Agreement No. 0008-93 (January 13, 1993), Articles 3, 4, & 49, to establish that Honduras law prohibits the exportation of lobster without first having it officially inspected for health and sanitation and processed/packed at an approved establishment in Honduras, which includes the packing of lobster into boxes that have been paraffined and labeled with the business name of the firm that makes the product, the weight, that it was "Inspected and Approved of by the Honduran Ministry of Natural Resources" and the number assigned to the processing company. This "Agreement" is a regulation under Honduran law, it was duly published in *La Gaceta*, and defendants do not dispute its validity. As Secretary Paz testified, the Agreement contains the inspection, industrial,

health, and hygiene regulations for the protection of fishery products.

Agreement No. 0008-93 provides in relevant part:

> The ones subject to the Official Inspection are the fishing vessels, storing centers and plants that capture, gather, industrialize and pack fishing products.
>
> In agreement with the present Regulation only the products previously inspected can be offered for sale.
>
> Products for export can only be the ones processed in plants approved for that purpose.

Agreement No. 0008-93, Article 3.

> Fish, crustaceans, molluscs, anurous reptiles and mammals of comestible type, from fresh or salt water, assigned for internal consumption or export and by extension are also included the subproducts obtained from the same mentioned products.

Agreement No. 0008-93, Article 4.

For the icing and packing of the products it will be observed:

h) The packing must be made in boxes with the appropriate label, treated with paraffin and the size must have been approved during the registration process. They must have the following legend:
1st) The name or trade name of the business that manufactured the product.

> 2nd) The weight.
> 3rd) The legend "Product of Honduras" that can be also placed in another language.
> 4th) A 3 (three) centimeter circle, "Inspected and Approved by the Department of Natural Resources of Honduras" and the number assigned to the establishment doing the processing.
> 5th) In addition, it can have printed the different denominations of the size of the product.

Agreement No. 0008-93, Article 49(h).

Defendants do not object to the first part of this statement of law, *i.e.*, that it is prohibited under Honduran law to export lobster without first having it officially inspected for health and sanitation and processed at an approved establishment in Honduras. Additionally. all parties agree that a fishing vessel can constitute a processing "plant," provided it meets the detailed requirements of a processing plant under the Fishing Law. Rather, the dispute between the parties turns on the definition of "processing," a term that is not specifically defined in the Agreement.

Based on the evidence presented, the court concludes that "processing" fish products for exportation includes inspection, grading, the preparation of the products for packaging, and the packaging itself. Secretary Paz testified that processing includes packaging. Mike Powers of Garden Restaurants testified that partial processing can occur onboard the fishing vessel, including the measuring and cutting off the lobster tails, washing, deveining, and dipping the product into an approved preservative. However, the "process" is not complete until the product is graded, the official inspector (or his selected technician) inspects and

approves the product, and it is properly packaged for exportation.

Finally, defendants make much of the fact that Agreement 0008-93, Article 5(t), permits the use of plastic as part of the packing materials.[45] However, Article 49 of Agreement 0008-93 plainly requires that the product ultimately be placed in a paraffined box prior to exportation, with the box appropriately labeled with the requisite information. Additionally, Secretary Paz testified that packing lobster in plastic bags—without more—for exportation is not adequate under Honduran law.

Accordingly, the court concludes that the government has met its burden of establishing that Point of Law 8 (as set forth on page six of this order) is valid and binding under Honduran law.

CONCLUSION

It is ORDERED that defendant McNab's "Motion to Dismiss Counts One through Twelve and Counts twenty-Eight Through Forty-Three of the Indictment," (doc. 53), and "Motion to Dismiss the Superseding Indictment," (doc. 151), are DENIED.

Nothing in this order should be construed as expressing, an opinion or making a finding as to the innocence or guilt of any of the defendants. It will be for the

---

[45] Agreement 0008-93, Article 5(t) provides:

> Packing Materials: All the materials such as sheets of aluminum, plastic, wax paper, cardboard boxes and others, used to cover and protect the fishing products, and that have been approved by the Department.

The fact that the Agreement permits the use of plastic as a packing materials is not surprising given the extensive regulations regarding the use of ice.

jury to decide whether the government proves any of the defendants guilty of any of the charges beyond a reasonable doubt. The fact that the court has "determined" the applicable Honduran law does not mean that the government has proven that any of the defendants have violated Honduran law or that the lobster or shrimp at issue in his case were taken, possessed, etc., in violation of Honduran law.

The Clerk is DIRECTED to send a copy of this order to counsel for all parties by facsimile.

DONE this 12th day of October, 2000.

/s/
RICHARD W. VOLLMER, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

UNITED STATES OF AMERICA [Filed August 28, 2001]

v. CRIMINAL ACTION NO. 1:00-00079-(1, 2, 3, & 4)-RV

DAVID HENSON MCNAB, ROBERT D. BLANDFORD, ABNER SCHOENWETTER, DIANE H. HUANG

ORDER

This matter is before the court on the following documents:

1. "Alternative Motions Based on Honduran Law Developments," (doc. 336), filed by defendant David Henson McNab; [46] [47]

---

[46] The "Alternative Motions"—which are premised on essentially the same grounds—are a "Motion to Dismiss," a "Motion for New Trial Based on Newly Discovered Evidence," and a Motion for Redetermination of Foreign Law."

[47] Defendants Robert D. Blandford and Abner J. Schoenwetter adopted defendant McNab's "Alternative Motions," (docs. 346 & 342, respectively). Defendant Diane H. Huang filed her own motion, also titled "Alternative Motions Based on Honduran Law Developments," (doc. 344), which is predicated on essentially the same

2. "Notice of Filing Regarding Hygiene Regulation Repeal," (doc. 325), filed by defendant McNab;

3. "Notice of Filing Regarding Annulment Action," doc. 324), filed by defendant McNab;

4. "Notice of Filing Regarding Fishing Law Changes," (doc. 326), filed by defendant McNab;

5. Supplemental Filing in Support of Alternative Motions," (doc. 341), filed by defendant McNab;

6. Second Supplemental Filing in Support of Alternative Motions, (doc. 371), filed by defendant McNab;

7. "Second Response to Defendants' Alternative Motions Based on Issues of Honduran Law," (doc. 387), filed by the government;[48]

and

8. Reply Declaration, (doc. 388), filed by defendant McNab.[49]

INTRODUCTION

Following a jury trial, defendants were convicted of, *inter alia*, conspiring to violate the Lacey Act, 16 U.S.C. § 3371 *et seq.* Stated generally, the Lacey Act makes it unlawful to import into the United States fish or wildlife that

---

grounds and evidence as McNab's alternative motions. For simplicity's sake, the court will refer only to the alternative motions filed by defendant McNab, although the court's ruling applies to all four defendants.

[48] The government's "Second Response" supercedes the government's first response. (doc. 378).

[49] During the hearing held by the court on August 17, 2001, the court granted Defendant McNab's "Motion for Leave to File Reply Declaration," (doc. 388), without objection by the government.

has been taken or acquired in violation of another country's laws. In this case, the government contended that defendants violated Honduran law in various ways when they conspired to import spiny lobster tails on multiple occasions over a five-year period. Prior to trial, the court made a number of determinations with respect to Honduran law pursuant to 18 U.S.C. § 3505(b)[50] and Fed. R. Crim. P. 12(b)[51] and 26.1.[52]

In his pending post-trial "alternative motions," defendant McNab has requested the court to revisit its Honduran law determinations, at least as to three particular

---

[50] Title 18 U.S.C. § 3505 provides:

> At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record or regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such a motion before trial shall constitute waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

[51] Fed. R. Crim. P. 12(b) provides, *inter alia*:

> Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion.

[52] Fed. R. Crim. P. 26.1 provides:

> A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

points. Because the court's jurisdiction was potentially impacted by the newly-raised grounds, the court ordered the government to file a response and, following that response, held a hearing on August 17, 2001. After full consideration of the arguments of counsel and the evidence submitted, the court concludes that the alternative motions are due to be denied.

DISCUSSION

Point of Law 1—Lobster Size Limits—Annulment of Resolution 030-95

In its original ruling on Honduran law, the court determined that Honduran Resolution 030-95, Third provision, prohibits the harvesting of spiny lobsters which are less than 5 1/2 inches in length. Defendant McNab contends that Resolution 030-95 has been annulled by a Honduran court and that, pursuant to Article 96 of the Honduran Constitution, the annulment operates retroactively in favor of a criminal defendant such as himself. The annulment action was instituted by McNab following this court's original ruling on Honduran law.

The government does not contest defendant McNab's assertion that the Honduran "Court of the First Instant of Administrative Law" declared Resolution 030-95 to be voided. Rather, the government points out, correctly so, that the Honduran administrative court declared the resolution to be void "but ... only for purposes of [its] annulment and future inapplicability. This Resolution does not confer any right to claims." Although the legal meaning of this limitation language under Honduran law is not entirely clear to the undersigned, the court concludes that the administrative court intended to give its pronouncement prospective, rather than retroactive, effect.[53]

---

[53] It would seem that a judge could not unilaterally declare the effect of his/her ruling to be non retroactive, for Article 96 of

Even if the administrative court's voidance of Resolution 030-95 should be given retroactive effect, the express language of the administrative court's ruling provides that it will not be a final judgment if an appeal is timely taken. It is undisputed that the Honduran government (which contested the annulment action before the administrative court) timely appealed the ruling. Consequently, the administrative ruling is not a final judgment, and it has no legal effect in Honduras. Because the administrative decision is not Honduran law now and because the evidence establishes that the Honduran government continues to enforce Resolution 030-95, the court concludes that Resolution 030-95 continues to be valid under Honduran law.

Point of Law 2—Processing/Packaging Rules—Repeal of Agreement 0008-93

In its original ruling, the court concluded that Agreement No. 0008-93 prohibits the exportation of lobster without first having it officially inspected for health and sanitation and processed/packed at an approved establishment in Honduras, which includes the packing of lobster into boxes that have been paraffined and labeled with (a) the business name of the firm that makes the product, (b) the weight, (c) that it was "Inspected and Approved of by the Honduran Ministry of Natural Resources" and (d) the number assigned to the processing company.

---

the Honduran Constitution would appear to "trump" any such declaration. This court need not decide that issue, however, because the government submitted evidence which the court understands to mean that an Honduran administrative court lacks the power to void a resolution with respect to criminal acts. *See* affidavit of Jose Bernardo Torres Umanzor ("since the judgment deals with an Administrative and not a Criminal matter, it has no retroactive effect and only has effects for its future inapplicability.").

It is undisputed that Agreement 0008-93 was issued pursuant to Decree No. 40 of May 16, 1973. It is also undisputed that Decree No. 40 was expressly repealed effective January 13, 1995, by Decree No. 157-94. From this, defendant McNab argues that the repeal of Decree No. 40 operated as a repeal of Agreement 0008-93. In support of this position, defendant McNab offered the affidavit of Ramiro Lozano, an Honduran attorney and law professor, who opined that "regulations are automatically repealed when the law under which they were issued is repealed."[54]

The Honduran Civil Code provides in relevant part:

> Article 42—A law may be revoked totally or partially by another law.
>
> Article 43—The revocation of the law may be express or tacit.
>
> It is express when the new law expressly revokes the law that antecedes it.
>
> It is tacit when the new law contains rules that may not be conciliated with the old law.
>
> Article 44—The express repeal may be total or partial, as set forth by the repealing law. The tacit repeal leaves in effect in the previous law anything not in conflict with the provisions of the new law, even though both versions may cover the same matter.

As the government points out, one of the objectives of the new decree (No. 157-94) was "to strengthen the phytozoosanitation, mainly in that which refers to the . . .

---

[54] Defendant McNab offered the affidavits of other Honduran attorneys who offered similar, if not identical, opinions.

control of products that are of animal and plant origin." Relying on Article 44 of the Honduran Civil Code, the government contends that "Agreement 0008-93 remained in effect following the repeal of Decree No. 40, at the very least to the extent that it did not impinge on the provisions of the new law." The court agrees. To conclude otherwise would mean that the passage of a law intended to strengthen the existing law would result in a weaker, if not impotent, new law during that window of time until the appropriate ministry or agency had sufficient time to draft, and the appropriate governmental official(s) to sign and publish, new regulations. Such a result is untenable if the Honduran National Congress had simply repealed Decree No. 40 without passing a new decree covering the same area of the law, then this court would readily conclude that Agreement 0008-93 no longer carried the force of law. That is not the case here, however. At all relevant times a decree existed covering the area of phytozoosanitation, and Agreement 0008-93 continued in effect when the new decree became effective, at least to the extent that Agreement 0008-93 was not inconsistent with the new decree.

There are two additional facts which buttress the court's conclusion. First, the Honduran governmental officials responsible for the enforcement of Decree No. 40, Decree No. 157-94, and Agreement 0008-93 continued to enforce Agreement 0008-93 after Decree No. 157-94 was enacted. Second, when the Honduran government decided to create new regulations for the enforcement of Decree No. 157-94, it did so by the passage of Accord No. 1081-99 five years after Decree No. 157-94 became effective. Decree No. 1081-99 specifically repealed Agreement 0008-93. If Agreement No. 0008-93 had been "automatically" repealed by the mere passage of Decree No. 157-94 in 1994 as defendant McNab argues, then there would have been no reason for Honduras to expressly repeal Agreement 0008-93

in 1999 as so provided automatically repealed Agreement 0008-93 in 1999 as so provided in Accord No. 1081-99.

Accordingly, the court concludes that Agreement 0008-93 remained in effect following the passage of Decree No. 157-94 and up to the passage of Accord No. 1081-99 and, therefore, was in effect at all times relevant to the charged conduct in the Second Superseding Indictment.

Point Three—Egg-Bearing Lobsters—Amendment of Article 70(3) of the Fishing Law

Defendant McNab correctly notes that Article 70 of the Fishing Law was amended by the Honduras National Congress in Decree No. 245-2000, which became effective on February 5, 2001. Defendant McNab also correctly notes that the amended Article 70 reenacted and restated some of the prohibitions of the former Article 70. As this court determined in its original ruling, the (now) former Article 70 prohibited the harvesting of egg-bearing lobsters. The amended Article 70 does not contain a specific prohibition against the harvesting of egg-bearing lobsters. The absence of a specific prohibition regarding the harvesting of egg-bearing lobster, combined with Article 96 of the Honduran Constitution (which provides that a change in the law does not have a retroactive effect except in criminal cases when the change benefits the accused), constitute the basis for defendant McNab's assertion that all counts (and convictions) predicated on a violation of the former Article 70 are due to be dismissed.

It is true that the Honduran National Congress reworked Article 70. The amended legislation contains 10 specific prohibitions and 1 catch-all provision. Namely, the following conduct is sanctionable:

(a) Fishing with chemical or explosive elements;

(b) Fishing carried out by unlicenced persons or persons with expired licenses;

(c) Fishing with prohibited gear;

(d) Catching for commercial purposes during the closed season;

(e) Clearing mangrove swamps or destroying ecosystems in general;

(f) Polluting with any substance the maritime or continental waters;

(g) Catching, destroying, or removing protected hydrobiological species, especially manatees;

(h) Shipowners or captains of vessels that fail to report their catch;

(i) Carrying out scientific research without a permit from the National Fisheries Authority;

(j) Shipowners or captains of vessels that fail to comply with the provisions related to the installation of the Sea Turtle Excluding Devices (DETs) as set forth by the National Fisheries Authority; and

(k) Any other activity not expressly mentioned in the preceding items indicated with letters but which is analogous.

In response, the government observes that the intent of the Honduran National Congress in amending Article 70 was to increase the monetary sanctions to reflect present currency valuations, thereby putting some teeth into the law:

> WHEREAS the current Fisheries Law . . . sets forth sanctions of an administrative nature, the amounts of which do not represent coercive

> measures that reflect the gravity of the violations committed, so that it is necessary to revise these sanctions according to the importance of the case and the current value of the national currency.

The government urges that those specific prohibitions contained in the former Article 70 but not in the amended Article 70 (including the egg-bearing lobster prohibition at issue here, as well as the prohibitions of catching lower weight fish, crustaceans, and chelonians, and catching a quantity too large to be transported in one's own vessel) remain in effect except to the extent that they are inconsistent with the new prohibitions. Because there is nothing in the amended Article 70 which is inconsistent with a prohibition against harvesting egg-bearing lobster, the government contends that the harvesting of egg-bearing lobster prohibition remains in effect, if not on its own, then at least through the catch-all provision "(k)" of the amended Article 70.

Of the three changes in Honduran law which defendant McNab advances in his alternative motions, it is this ground which gives the court the most pause. It is troubling that the Honduran National Congress would specifically "bring over" certain prohibitions from the former Article 70 into the amended Article 70, and choose not to specifically "bring over" other prohibitions, only for this court to conclude that the prohibitions not expressly brought over are still valid law to the extent that they are not inconsistent with the amended Article 70. Nevertheless, after full consideration, the court concludes that that is exactly what this court must do in light of Honduran Civil Code Articles 42, 43 & 44. This conclusion is buttressed by the stated purpose of the amendment—to increase the penalties—not to reduce the prohibited conduct. This conclusion gains additional support from the affidavit of

Liliana Paz, General Secretary in the Ministry of Agriculture and Livestock, the department of the Honduran government ultimately responsible for the enforcement of the fisheries law, to which she states (albeit without much elaboration) that "the destruction or harvest of eggs of aquatic species remains prohibited under Honduran law, subject to greater penalties."

Accordingly, the court concludes that the harvesting and destruction of egg-bearing lobsters continues to be prohibited conduct under Honduran law.

CONCLUSION

After due consideration, it is

ORDERED that defendant McNab's alternative motions are DENIED for the foregoing reasons.

The Clerk is DIRECTED to send a copy of this order to counsel for all parties by facsimile.

DONE this 28th day of August, 2001.

/s/
RICHARD W. VOLLMER, JR
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	*	
vs.	*	CRIMINAL NO. 00-0079-RV
DAVID HENSON MCNAB, ROBERT D. BLANDFORD, ABNER J. SCHOENWETTER AND DIANE H. HUANG, Defendant.	*	

ORDER

The above-styled case came on for a trial by jury on October 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30, 31, 2000 and November 1, 2 and 3, 2000 with the Honorable Richard W. Vollmer, Jr., United States District Judge presiding. The jury was selected but not sworn on October 3, 2000 before the Honorable William H. Steele, United States Magistrate Judge.

On October 16, 2000, the jury was duly sworn and trial commenced. The government presented its case-in-chief on October 16 through October 25, 2000 and rested. At the conclusion of the government's case the court heard argument on the defendants, David Henson McNab, Robert D. Blandford, Abner J. Schoenwetter and Diane H. Huang's motions for judgment of acquittal which was DENIED in part and GRANTED in part as to the "closed season" and "shrimp" violations referenced in the second superseding indictment. Consequently, the court instructed the jury to disregard all allegations in the second superseding indictment regarding "closed season" and "shrimp" violations as to all of the defendants.

On October 26, 2000, the defendant David Henson McNab presented his evidence and rested. The defendants Abner J. Schoenwetter, Robert D. Blandford and Diane H. Huang rested without presenting any further evidence. At the conclusion of all the evidence, the defendants renewed their motions for judgment of acquittal which were DENIED as set out in the record.

On October 27, 2000, the court held a charge conference with counsel and defendants present and the respective parties presented their closing arguments to the jury. The court charged the jury on the applicable law and the jury commenced their deliberations.

On October 30 and 31, 2000 and November 1, 2 and 3, 2000, the jury reconvened to continue their deliberations. Now, on this the 3rd day of November 2000, comes the jury who having heard the evidence; the arguments of counsel, the charge of the court and having considered the same upon their oaths return the following verdicts into open court with counsel and defendants present, copies of which are attached hereto and made a part of this order.

It is therefore ADJUDGED that the defendant David Henson McNab has been found GUILTY and CONVICTED of the offense of violations of Title 18, United States Code, Sections 545, 1956(a)(1)(A)(i) and 2 and Title 16, United States Code, Sections 3372(a)(2)(A), 3373(d)(1)(B) and, 3373(d)(1)(A) as charged in count one, subsections (a), (b), (c) and (d) of the second superseding indictment; and Title 18, United States Code, Sections 845 and 2 as charged in courts two through twelve of the second superseding indictment; and Title 18, United States Code, Sections 1957 and 2 as charged in counts twenty-eight through forty-two of the second superseding indictment; and Title 18, United States Code, Sections 1957 and 1956(h) as charged in count forty-three of the second superseding indictment.

It is ADJUDGED that the defendant Robert D. Blandford has been found GUILTY AND CONVICTED of violations of Title 18, United States Code, Sections 545, 1956(a)(1)(A)(i) and 2 and Title 16, United States Code, Sections 3372(a)(2)(A), 3373(d)(1)(B) and, 3373(d)(1)(A) as charged in count one, subsections (a), (b), (c) and (d) of the second superseding indictment; and Title 18, United States Code, Sections 845 and 2 as charged in courts two through twelve of the second superseding indictment; and Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(B) and Title 18, United States Code, Section 2 as charged in counts thirteen through twenty-two of the second superseding indictment and Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2) of the lesser included offense as charged in counts twenty-six and twenty-seven of the second superseding indictment; and Title 18, United States Code, Sections 1957 and 2 as charged in counts twenty-eight through thirty-nine of the second superseding indictment; and Title 18, United States Code, Sections 1957 and 1956(h) as charged in count forty-three of the second superseding indictment.

It is ADJUDGED that the defendant ABNER J. SCHOENWETTER has been found GUILTY AND CONVICTED of the offense violation of Title 18, United States Code, Sections 545, 1956(a)(1)(A)(i) and 2 and Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(B) as charged in count one, subsections (a), (b) and (d) of the second superseding indictment; and the lesser included offense in violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2) and Title 18, United States Code, Section 2 as charged in counts thirteen through twenty-seven of the second superseding indictment; and Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(i) and Title 18, United States Code, Section 2 as charged in count forty-seven of the second superseding indictment. It is further ADJUDGED that the defendant DIANE H. HUANG has been found NOT GUILTY and ACQUITTED of the offense of violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(1)(A) as charged in subsection (1)(c).

Upon completion of the reading of each defendant's verdict, the jury was duly polled by the court. The parties notified the court that the forfeiture count of the second superseding indictment had been settled as set out on the record.

The government made an oral motion to increase the bond conditions of the defendant DAVID HENSON MCNAB which was GRANTED. The defendant DAVID HENSON MCNAB was released on a bond in the amount of $2,000,000.00 with the condition that he be allowed to keep his passport and upon his oral waiver to the court of extradition and his agreement to be sentenced *in absentia* should he fail to return to the United States for his sentencing which is POSTPONED to March 16, 2001 at 9:00 a.m.

The defendants ROBERT D. BLANDFORD and DIANE H. HUANG were released on their present conditions of release pending imposition of sentencing which is POSTPONED to March 2, 2001 at 10:00 a.m. The defendant ABNER J. SCHOENWETTER was released on his present conditions of release pending imposition of his sentence which is POSTPONED to March 16, 2001 at 9:00 a.m.

DONE this the 4th day of December, 2000.

\s\
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 01-15148, No. 02-10810, No. 02-11264

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus DAVID HENSON MCNAB, ROBERT D. BLANDFORD, et al., Defendants-Appellants. UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ABNER SCHOENWETTER, ROBERT D. BLANDFORD, Defendants-Appellants. UNITED STATES OF AMERICA, Plaintiff-Appellee, versus DAVID HENSON MCNAB, ABNER SCHOENWETTER, et al., Defendants-Appellants.

May 29, 2003

Before HULL, WILSON and FAY, Circuit Judges.

ORDERED:

The petitions for rehearing are granted in part by deleting entirely footnote 24 from the Court's opinion which was issued on March 21, 2003. The court will issue a substituted opinion making that deletion. The Court otherwise denies

the petitions for rehearing of defendants' McNab, Schoenwetter, Huan, Blandford and Embassy of Honduras.

No member of this Court having requested a poll, we deny the suggestion for rehearing en banc. See F.R.App.P. 35(a); Eleventh Circuit rule 35-5.

FAY, Circuit Judge, dissents.

APPENDIX F

CHAPTER 53--CONTROL OF ILLEGALLY TAKEN FISH AND WILDLIFE
16 U.S.C. § 3371. Definitions

For the purposes of this chapter:

* * *

(c) The term "Indian tribal law" means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of Title 18.

(d) The terms "law," "treaty," "regulation," and "Indian tribal law" mean laws, treaties, regulations or Indian tribal laws which regulate the taking, possession, importation, exportation, transportation, or sale of fish or wildlife or plants.

§ 3372. Prohibited acts

(a) Offenses other than marking offenses

It is unlawful for any person--

(1) to import, export, transport, sell, receive, acquire, or

purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;

(2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce--

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law, or

(B) any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(3) within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of Title 18)--

(A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law or Indian tribal law, or

(B) to possess any plant taken, possessed, transported, or sold in violation of any law or regulation of any State;

(4) to attempt to commit any act described in paragraphs (1) through (4).

(b) Marking offenses

It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph

(2) of section 3376(a) of this title.

* * *

(d) False labeling offenses

It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be--

(1) imported, exported, transported, sold, purchased, or received from any foreign country; or

(2) transported in interstate or foreign commerce.

§ 3373. Penalties and sanctions

(a) Civil penalties

(1) Any person who engages in conduct prohibited by any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates section 3372(d) of this title, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation: *Provided,* That when the violation involves fish or wildlife or plants with a market value of less than $350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, or regulation, or $10,000,

whichever is less.

(2) Any person who violates section 3372(b) of this title may be assessed a civil penalty by the Secretary of not more than $250.

(3) For purposes of paragraphs (1) and (2), any reference to a provision of this chapter or to a section of this chapter shall be treated as including any regulation issued to carry out any such provision or section.

(4) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which a person may have taken or been in possession of the said fish or wildlife or plants.

(5) Any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary.

(6) In determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and such other matters as justice may require.

* * *

(d) Criminal penalties

(1) Any person who--

(A) knowingly imports or exports any fish or wildlife or

plants in violation of any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title), or

(B) violates any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of $350,

knowing that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than $20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(2) Any person who knowingly engages in conduct prohibited by any provision of this chapter (other than subsections (b) and (d) of section 3372 of this title) and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than $10,000, or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants.

(3) Any person who knowingly violates section 3372(d) of this title--

(A) shall be fined under Title 18, or imprisoned for not more than 5 years, or both, if the offense involves--

(i) the importation or exportation of fish or wildlife or plants; or

(ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than $350; and

(B) shall be fined under Title 18, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A).

§ 3374. Forfeiture

(a) In general

(1) All fish or wildlife or plants imported, exported, transported, sold, received, acquired, or purchased contrary to the provisions of section 3372 of this title (other than section 3372(b) of this title), or any regulation issued pursuant thereto, shall be subject to forfeiture to the United States notwithstanding any culpability requirements for civil penalty assessment or criminal prosecution included in section 3373 of this title.

(2) All vessels, vehicles, aircraft, and other equipment used to aid in the importing, exporting, transporting, selling, receiving, acquiring, or purchasing of fish or wildlife or plants in a criminal violation of this chapter for which a felony conviction is obtained shall be subject to forfeiture to the United States if (A) the owner of such vessel, vehicle, aircraft, or equipment was at the time of the alleged illegal act a consenting party or privy thereto or in the exercise of

due care should have known that such vessel, vehicle, aircraft, or equipment would be used in a criminal violation of this chapter, and (B) the violation involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants.

§ 3378. Miscellaneous provisions

(a) Effect on powers of States

Nothing in this chapter shall be construed to prevent the several States or Indian tribes from making or enforcing laws or regulations not inconsistent with the provisions of this chapter.

(b) Repeals

The following provisions of law are repealed:

(1) The Act of May 20, 1926 (commonly known as the Black Bass Act; 16 U.S.C. 851-856).

(2) Section 667e of this title and sections 43 and 44 of Title 18 (commonly known as provisions of the Lacey Act).

(3) Sections 3054 and 3112 of Title 18.

(c) Disclaimers

Nothing in this chapter shall be construed as--

(1) repealing, superseding, or modifying any provision of Federal law other than those specified in subsection (b) of this section;

(2) repealing, superseding, or modifying any right, privilege, or immunity granted, reserved, or established

pursuant to treaty, statute, or executive order pertaining to any Indian tribe, band, or community; or

(3) enlarging or diminishing the authority of any State or Indian tribe to regulate the activities of persons within Indian reservations.

APPENDIX G

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 27--CUSTOMS
545. Smuggling goods into the United States

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law--

Shall be fined under this title or imprisoned not more than five years, or both.

Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States.

The term "United States", as used in this section, shall not include the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam.

APPENDIX H

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 95--RACKETEERING
1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

* * *

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant s knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant s subsequent statements or actions indicate that the defendant believed such representations to be true.

* * *

(b) Penalties.--

(1) In general.--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

* * *

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

* * *

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 95--RACKETEERING

1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the

criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are--

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General.

(f) As used in this section--

(1) the term "monetary transaction" means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a

financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person 's right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term 'criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the term 'specified unlawful activity' has the meaning given that term in section 1956 of this title.

APPENDIX I

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 1--GENERAL PROVISIONS
18 U.S.C. 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

* * *

18 U.S.C. § 371 CONSPIRACY TO COMMIT OFFENSES OR TO DEFRAUD UNITED STATES

If two or more persons conspire either to commit any offenses against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

FEDERAL RULE OF CRIMINAL PROCEDURE
RULE 26.1 DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

APPENDIX J

FLORIDA ADMINISTRATIVE CODE ANNOTATED TITLE 68. FISH AND WILDLIFE CONSERVATION COMMISSION SUBTITLE 68B. MARINE FISHERIES CHAPTER 68B-24. SPINY LOBSTER (CRAWFISH) AND SLIPPER LOBSTER

68B-24.003. Minimum Size Limits.

(1) No person shall harvest or possess any spiny lobster with a carapace measurement of 3 inches or less or, if the tail is separated from the body, a tail measurement less than 5 1/2 inches not including any protruding muscle tissue, except as may be provided in subsection (3) of this rule.

* * *

(1) The harvest or possession of eggbearing spiny lobster is prohibited. Eggbearing spiny lobster found in traps shall be immediately returned to the water free, alive, and unharmed. The practice of stripping or otherwise molesting eggbearing spiny lobster in order to remove the eggs is prohibited and the possession of spiny lobster or spiny lobster tails from which eggs, swimmerettes, or pleopods have been removed or stripped is prohibited.

* * *

FLORIDA STATUTE

§ 370.07 Wholesale and retail saltwater products dealers; regulation.-

(1) DEFINITIONS; LICENSES AUTHORIZED.- Annual license or privilege taxes are hereby levied and imposed upon dealers in the state in saltwater products. It is

unlawful for any person, firm, or corporation to deal in any such products without first paying for and procuring the license required by this section. Application for all licenses shall be made to the Department of Environmental Protection on blanks to be furnished by it. All licenses shall be issued by the department upon payment to it of the license tax.

APPENDIX K

COURT OF THE FIRST INSTANCE OF ADMINISTRATIVE LAW, TEGUCIGALPA, Municipality of the Central District, the twenty-third day of May of the year two thousand one. IN VIEW OF THE FOLLOWING: In order to render a Final Sentence, the lawsuit with the incoming number 179-00, filed by the attorney Maria Letizia Suazo de Guillén, of full age, of Honduran nationality and domiciled in this city, in her capacity as attorney for Mr. David Henson McNab against the State of Honduras through the Secretariat of the State of the Offices of Natural Resources, now Secretariat of State in the Offices of Natural Resources and the Environment, is suing for the absolute nullity of acts of a general nature because of a defect in competent jurisdiction of the exercise of the regulatory power attributed by the Constitution solely to the President of the Republic in the central public administration. THE PARTIES ARE: Plaintiff: Mr. David Henson McNab, represented in court by the attorney Marco Antonio Lanza. Defendant: The State of Honduras represented in court by the attorney Héctor Ramón Tróchez, who substituted the attorney Jose Bernardo Torres U. WHEREAS (1) the plaintiff alleges the following facts: 1) On January 4, 1995, the Secretariat of State of Natural Resources and the General Directorate of Fisheries and Agriculture issued what they called "Resolution No. 001-95," signed by the then Minister of that area and the Director General of Fisheries (DIGEPESCA), setting forth regulatory standards concerning the closed season for shrimp, lobsters and conchs in the Atlantic Ocean, as well as the forms or means for catching lobsters and shrimp. 2) On December 5th, the same authorities issued what they called "Resolution No. 030-95," whereby they set

forth regulations concerning the closed season for catching shrimp, lobsters and conchs in the Atlantic Ocean, in addition to the nets of shrimp boats and provisions for catching lobsters and the minimum date for catching conchs. 3) On December 17, 1997, the Secretariat of State for Agriculture and Livestock and the Director General of Fisheries and Agriculture issued what they called, "Resolution no. 031-97," signed by the Minister, the Director General of Fisheries and the Secretary General of the aforesaid Secretariat of State whereby they set forth general provisions related to the closed season for catching shrimp, lobsters and conchs in all of the species in the Caribbean Sea and coastal laguna systems and, in addition, the closed season for the giant conch. 4) On April 3, 2000, the Secretariat of Agriculture and Livestock and the Director General of Fisheries and Agriculture issued what they called "Resolution No. 006-2000," by means of which they set forth general provisions establishing the closed season for catching white shrimp, brown shrimp and pink shrimp, as well as the closed season for catching the common lobster, giant conch and queen conch and, in addition, other regulations related to fishing vessels and indicating sanctions for certain violations of these general rules. 5) The aforementioned Resolutions are invalid because the first two were issued by the Secretary of State in the Offices of Natural Resources and the Director General of Fisheries and Aquiculture and the last two by the Secretary of State in the Offices of Aquiculture and Livestock and the Director General of Fisheries and Agriculture with the countersignature of the Secretary General of the aforesaid Secretariat of State, without having competent jurisdiction to issue the aforesaid regulatory rules because the power belongs in the Central Administration to the President of the Republic pursuant, to Article 245, Item 11, of the Constitution and the Secretaries of State only authorize with their signature the regulations of the President pursuant to Article 248 of the Constitution itself. Accordingly, issuing administrative acts of a general nature outside the law, i.e., in

violation of the Constitution, are absolutely null and void as ordered by Articles 321 of the Constitution and 34, Paragraph One, of the Administrative Procedure Law, which reads verbatim: "Notwithstanding what is set forth in the essential laws, the administrative act is null and void . . .". The Constitution is a special law in the political and legal order, because it structures the organization of the State and the rights of the governed; it is, doubtless, the most special law of all laws in the legal order because it creates the organs of the State and creates the law. Furthermore, according to Article 36 of General Law of the Public Administration, the Secretaries of State, with regard to the regulatory power, only have the power of "issuing the regulations of internal organization of their respective offices" and only by a Law of the Congress may a given Secretariat of State be given regulatory power, in which case the law expressly states this mentioning the Secretariat of State that will enjoy this prerogative because, when the law uses the expressions, "by means of the Secretariat of Natural Resources . . .", as in Article 5, Paragraph One, of the Fisheries Law or else the Executive Branch through the Secretariat of Natural Resources, as in Article 11 of the aforesaid Law, it obviously uses the term Executive Power referring to the President of the Republic, who is its Office Holder, and not the Secretariat of State in the area, who is nothing more than the assistant of the President as conceived by Article 247 of the Constitution. 7) In addition to being defective with absolute nullity because of a lack of competent jurisdiction, the Resolutions directly challenged also have the defect of annullability by reason of the form, since, being administrative acts of a general nature or, i.e., regulatory provisions, they should not have adopted the form of Resolutions, but of Orders *[Acuerdos]* as required by Article 118, Item 2, of the General Law of the Public Administration which states: "The [following] shall be issued by a Order; 1) . . . , 2) Any acts of a general nature issued in the exercise of the regulatory power. WHEREAS (2): The defendant in its reply to the

lawsuit claims the following: it accepts facts numbers 1, 2, 3 and 4 inasmuch as it is true that Resolutions Numbers 001-95, 030-95, 031-95 and 006-2000 were issued. In fact number six it rejects the first paragraph because of being contrary to law, since, even though it is true that the power to issue regulatory rules belongs in the Public Administration to the President of the Republic and that the Secretaries of State only authorize with their signature the regulations of the President, the challenged administrative acts are Resolutions and not Regulations so that the signature of the President is not required. These Resolutions were issued by the officials legally authorized by the Law to carry out this type of acts as stipulated by Article 122 of the Public Administration Law. It rejects the second paragraph of fact number six in view of the fact that the aforesaid acts are contemplated expressly in the current Fisheries Law; in addition, it rejects the third paragraph in view of the fact that the General Law of the Public Administration in Article 30, Item 8, thereof stipulates as a power of the Secretaries of State issuing Degrees and Resolutions in the matters under their competent jurisdiction and those as delegated to them by the President of the Republic, and seeing that they are implemented and, in the case of proceedings, the enforcement of the current Fisheries Law is the exclusive competency of the Secretariat of Agriculture and Livestock previously called Natural Resources. It rejects fact number seven as contrary to law, inasmuch as the Fisheries Law empowers the Secretariat of Agriculture and Livestock, previously called Natural Resources, to issue the Resolutions and any other measures deemed necessary for the greater efficacy of all of the fishing activities. It rejects fact number eight due to the fact that, although it is true that the Fisheries Law in Articles 5, 7, and 45 thereof, among others, set forth that regulations should be issued for the enforcement of the aforesaid law, it is also true that the Law says that the Secretariat of State may issue the appropriate Resolutions, so that, inasmuch as the plaintiff is against the Fishery Resolutions that have been issued under

the Fisheries Law and which are administrative acts of a general nature by means of which regulations have been imposed on the fishery business to attempt to prevent the elimination of the resources, this would be against what is being attempted to be regulated. It rejects the legal grounds invoked by the plaintiff. The explanation of the nature with which of the action under administrative law is deduced in the suit for absolute nullity of administrative acts in a general nature is totally rejected, since the plaintiff himself admits that the challenged acts are final acts, inasmuch as they were not appealed by the deadlines set forth by the Law. The Resolutions alluded to by the plaintiff's Attorney have been legally issued pursuant to the provisions of Article 122 of the General Law of the Public Administration and on the basis of the Fisheries Law contained in Decree 154 dated May 19, 1959. The administrative Resolutions represent the decision or disposition of the State to enforce legal provisions, inasmuch as the existence of Regulations is not necessary; it is sufficient for it to be based on a current law. An Administrative Resolution, since it is not regulations, does not require any delegation by the President of the Republic, even when he is the only one within the Central Public Administration to issue Regulations as such. The Fisheries Law states in Article 3 thereof all of the species of fish, crustaceans, mollusks, aquatic mammals and reptiles, marine plants and all other species that comprise the marine, lacustrine and fluvial flora and fauna are State property of common domain and public use. They may be fished, removed and used and traded freely by all Hondurans subject to the restrictions of this Law, the Regulations for its enforcement and other resolutions as stated, without the possibility of granting monopolies, auctions, lease contracts of any kind for fishing in all the waters of the sea, rivers, bays, harbors, coves, constructions, lagoons, lakes, canals, adjacent keys and islands, etc., or in part of them by any individual or entity involving privileges that violate the right to public property. The General Law of the Public

Administration in Article 10 thereof states that the following are organs of the Executive Branch: 1) the Presidency of the Republic, 2) the Council of Ministers and 3) the Secretariats of State. Article 11 of the same legal corpus sets forth that the President of the Republic is responsible for the supreme direction and coordination of the centralized and decentralized public administration. The current Fisheries Law in Article 5 thereof states that the Executive Branch by means of the Secretariat of natural resources, now Agriculture and Livestock, is the higher authority in matters of fisheries and matters related thereto; obviously, the resolutions do not necessarily have to be issued by the office holder of the Executive Branch, since the Secretariat of State in the Offices of Agriculture and Livestock, as a organ of the Executive Power, have sufficient legal powers to issue Resolutions and other measures it deems necessary for the better efficacy of all of the fishery activities as set forth in Articles 3, 5, 7, Items c), i), j). Likewise, the General Law of the Public Administration in Article 36, Item 9), thereof sets forth as common powers and duties of the Secretaries of State the issuing of Orders *[Acuerdos]* and Resolutions in the matters under their jurisdiction and those delegated to them by the President of the Republic and see to their enforcement. WHEREAS (3): the plaintiff filed the following exhibits: Documentary Exhibit No. 1, Documentary Exhibit No. 2, Documentary Exhibit No. 3, Communication Exhibit No. 4, Documentary Exhibit No. 6, Documentary Exhibit No. 7 and Exhibit No. 11 (Inspection by the Judge). WHEREAS (4): the facts alleged in the lawsuit were reliably proven as follows: on pages 66-67 of the proceedings that the Resolutions issued by the authorities of the Secretariat of Agriculture and Livestock are regulatory provisions in matters of fisheries, whose power to issue them lies solely with the Office Holder of the Executive Branch through the respective Secretariat of State; also authenticated in this exhibit are the alleged facts numbers 6 and 7 referring to the absolute nullity of the Resolutions, since the first two were

issued by the Secretary of State in the Office of Natural Resources and the Director General of Fisheries and the last ones by the Secretary of State in the Offices of Agriculture and Livestock and the Director General of Fisheries and Agriculture, with the countersignature of the Secretary General of the aforementioned Secretariat of State, without having competent jurisdiction to issue these regulatory rules, because the competent jurisdiction lies with the President of the Republic, pursuant to Article 245, Power 11, of the Constitution of the Republic and their nullity is set forth in Article 34 of the Administrative Procedure Law. Also, fact 7 of the lawsuit was proven, referring to the fact that these Resolutions also contain the defect of annullability by reason of form, since, inasmuch as they are administrative acts of a general nature, they should not have adopted the form of Resolutions but of Degrees, as required by Article 118, Item 2, of the General Law of Public Administration. With Exhibit Number 2 (see pages 66 and 67) in the opinion of the Bar Association of Honduras, it was proven that the aforementioned resolutions are regulatory provisions and the power to issue them lies with the Office Holder of the Executive Branch and also facts 6 and 7 of the lawsuit were authenticated; with documentary exhibit number 3 (see pages 70 and 76), consisting of the legal opinion of the attorney Ramiro Lozano, it is again proved that the power to issue the aforesaid Resolutions lies with the Office Holder of the Executive Power and, accordingly, when the authorities of the Secretariat of Agriculture and Livestock issue them, there is a manifest violation of the power of the President of the Republic. With Exhibit Number 4 (see pages 158 through 161), in the form of a Report of the Office of the Attorney General of the Republic, it was authenticated that the Secretary of Agriculture and Livestock did not send to issue an opinion the general regulations for the enforcement of the Fisheries Law or the drafts of the regulatory provisions of the aforementioned Law; and the Secretariat of Finance and the Secretary General of the Secretariat of State in the

Presidential Office gave an opinion in the same terms (see pages 138, 161, 163 through 165, respectively). Exhibit Number 6 submitted copies of the Official Journal *La Gaceta* Nos. 29,078, 29,081 and 29,082 in which there appear, as well as exist, hundreds of regulations, regulatory rules or provisions of a general scope issued by means of Orders of the President of the Republic through Article 245, Item 11, of the Constitution of the Republic. With Exhibit Number 7, it was authenticated that the Fisheries Law, Decree No. 154, of March 19, 1959, was never regulated and that in order to take the place of said regulations, Executive Orders and Ministerial Resolutions were issued. With Exhibit Number 11 (see page 154), it was authenticated that there are no Regulations of the Fisheries Law, but only resolutions issued by the Secretariat of State and the Director General of Fisheries and Agriculture. With all of this evidence, it was authenticated that the Resolutions which were issued by the Secretariat of State in the Office of Agriculture and Livestock to the regulate the Fisheries Law are null and void as a matter of taw because they were drawn up in violation of Article 245, Item 11, of the Constitution of the Republic. WHEREAS (5): although it is true the lawsuit is directed against resolutions that are final and are producing effects, the Law of the Jurisdiction of the Administrative Law in Article 32 thereof sets forth that a lawsuit under administrative law will be admitted against final acts and those confirmatory acts of final acts referred to by Item a) of Article 31 of the same law whenever they are null and void as a matter a law and are producing effects; but this is only for purposes of their annulment and future inapplicability, so that the action must be declared according to law. WHEREAS (6): the Administrative Procedure Law sets forth in Article 24 thereof that the acts will be issued respecting the procedures provided for in the legal code and, therefore, those acts in which a violation of the legal code is incurred are annullable and according to Article 34 of the same law in Item c) thereof issued acts, totally and absolutely regardless

of the procedure set forth, are null and void as a matter of law. THEREFORE: This Court of the First Instance of Administrative Law with jurisdiction in the Departments of Francisco Morazán, Comayagua, Intibuca, La Paz, Olancho, El Paraíso, Choluteca, Valle and Gracias a Dios, dispensing justice on behalf of the State of Honduras and pursuant to Articles 314, 318, 245, Power 11, and 248 of the Constitution of the Republic, 1, 11, 40 and 147 of the Law of the Organization and Powers of the Courts; 1, 2, 7, 9, 12, 13, 25, 26, 32, 42, 48, 78, 79, 81, 82, 95, 96, 129 and 134 of the Law of the Jurisdiction in Matters Under Administrative Law; 184, 185, 186, 187, 190, 191 and 192 of the Civil Procedure Code; 1, 24, 25, 34 and 35 of the Administrative Procedure Law; 1, 7, 8, 118, Item 2 of the General Law of the Public Administration; Official Letter No. 808J-3622-89 and Order No. 3-98 of the Honorable Supreme Court of Justice. RULES: First: To declare that the action is according to law, inasmuch as the challenged acts do not conform to law by virtue of having violated the legal code at the time they were issued. Second: the challenged Resolutions No. 001-95 of January 4, 1995, No. 030-95 of December 5, 1995, No. 031-97 of December 17, 1997, and No. 006-2000 of April 3, 2000, are entirely voided, but this is only for purposes of their annulment and future inapplicability: This Resolution does not confer any right to claims. AND ORDERS: that, if by the deadline, no appeal is filed against this decision, it becomes final, with a communication, issued with the stylistic insertions to the Secretary of State in the Offices of Agriculture and Livestock for him to implement this decision immediately by adopting whatever resolutions as may be according to law and enforcing the statements contained therein; no administrative file is being returned since it had not been submitted by virtue of the fact that this document did not exist inasmuch as the challenged acts were acts of a general nature. Because there were rational grounds for litigation, the party defeated

in the lawsuit is exempted from expenses. NO COST. LET NOTICE BE SERVED.
[illegible signature]
[Rubber stamp: "COURT OF THE FIRST INSTANCE OF ADMINISTRATIVE LAW JUDGE. Tegucigalpa, Honduras"]
[illegible signature]
[Rubber stamp: "COURT OF THE FIRST INSTANCE OF ADMINISTRATIVE LAW. Clerk. Tegucigalpa, Honduras."]
[illegible signature]
[New page:]
[Handwritten:] The City of Tegucigalpa M.D.C. on the twenty-fifth day of the month of May of the year two thousand one, the attorney Marco Antonio Lanza was notified of the decision rendered on the twenty-third day of May of the year two thousand one, signs with understanding at 10:20 a.m. [illegible signature]
[Rubber Stamp: "BAR ASSOCIATION OF HONDURAS. {ILLEGIBLE NUMBER} MARCO A. LANZA GÓMEZ".]
[Rubber stamp: "COURT OF THE FIRST INSTANCE OF ADMINISTRATIVE LAW. CLERK. TEGUCIGALPA, HONDURAS"]
In the city of Tegucigalpa M.D.C., on the twenty-eight day of the month of May of the year two thousand one, the attorney José Bernardo Torres C. has been notified of the decision dated the twenty-third day of the current year as above, signs with understanding and at the same time requests a copy of this decision it being 2:10 p.m. [illegible signature]
[Rubber Stamp: "BAR ASSOCIATION OF HONDURAS. 1893?507. JOSE BERNARDO TORRES AMANZOR".]
[illegible signature]
[Rubber stamp: "COURT OF THE FIRST INSTANCE OF ADMINISTRATIVE LAW. CLERK. TEGUCIGALPA, HONDURAS".]
[New page:]
[Handwritten:] May 25, 2001 10:30 p.m.

Notification by Table of Notices
Judge of the Court of First Instance of Administrative Law
I, Marco Antonio Lanza, acting in my capacity as Attorney for Mr. DAVID HENSON McNAB in the lawsuit that he has brought against the State of Honduras, the Secretariat of Agriculture and Livestock through the Attorney General of the Republic, so that the nullity and future inapplicability of some resolutions will be declared, respectfully come before you requesting that the ruling dated the twenty-third day of May of the current year be served by means of the Table of Notices of the Office on the Attorney for the defendant JOSE BERNARDO TORRES AMANZOR.
I ask Your Honor to admit this brief, process it according to law and rule in conformity.
Tegucigalpa, May 25, 2001.
[illegible signature]
[Rubber stamp: "BAR ASSOCIATION OF HONDURAS. {illegible number} MARCO A. LANZA GOMEZ"]

APPENDIX L

CERTIFICATION

The Undersigned Clerk of the Court of Appeals for Administrative Law, with jurisdiction at the national level, on today's date certifies: The judgment that literally states: **COURT OF APPEALS OF ADMINISTRATIVE MATTERS.** Tegucigalpa, Municipality of the Central District, on the eleventh day of October, two thousand one. **INASMUCH AS:** In order to hand down a final judgment in the appeal filed by **JOSÉ BERNARDO TORRES UMANZOR**, Esq., in his capacity as attorney for the State of Honduras, through the Secretariat of State in the Offices of Agriculture and Livestock, against the final judgment dated the twenty-third day of the month of May, located in Tegucigalpa, Municipality of the Central District, in the suit brought by MARÍA LETIZIA SUAZO DE GUILLÉN, Esq., in her capacity as attorney for Mr. DAVID HENSON McNAB, against the State of Honduras, through the Secretariat of State in the Offices of Agriculture and Livestock, retained to petition for the absolute nullity of acts of a general nature consisting of Resolutions No. 001-95 of January 4, 1995, No. 030-95 of December 5, 1995, No. 031-97 of December 17, 1997, and No. 006-2000 of April 3, 2000, because of a jurisdictional flaw in the exercise of the regulatory power conferred by the Constitution solely upon the President of the Republic in the Central Public Administration. This exhibit is recorded under Number **063-2001. THE PARTIES ARE: APPELLANT:** The State of Honduras, through the Secretariat of State in the Offices of Agriculture and Livestock, represented at Court by JOSÉ BERNARDO TORRES UMANZOR, Esq. **RESPONDENT:**

Mr. DAVID HENSON McNAB, represented at court by the Attorney MARCO ANTONIO LANZA LÓPEZ. The final judgment appealed is the one that states in its relative part: COURT OF FIRST INSTANCE IN ADMINISTRATIVE LAW. **Tegucigalpa, Municipality of the Central District, the twenty-third day of May, two thousand one.... DECISION: First: That the action is declared to be in order, inasmuch as the acts contested because of having violated the legal code when they were issued do not adhere to the Law. Second: Accordingly, the contested Resolutions No. 001-95 of January 4, 1995, No. 030-95 of December 5, 1995, No. 031-97 of December 17, 1997, and No. 06-2000 of April 3, 2000, are annulled in their entirety, but solely for purposes of their annulment and future inapplicability. This Resolution confers no right to claims. WITHOUT COST. NOTICE IS THUS SERVED. WHEREAS:** Pursuant to Articles 245, item 11, and 248, of the Constitution of the Republic, in order for regulations to have legal effect, they must be issued by the President of the Republic and authorized by the Secretaries of State in their respective areas or by the Under Secretaries as applicable. **WHEREAS:** The Jurisdiction in Administrative Law shall rule within the limits of the claims filed by the parties and the allegations inferred to lay the grounds for the action and the challenge. **WHEREAS**: It is incumbent upon the Courts of Law to enforce the laws in specific cases. **WHEREAS:** The final judgment against which appeal is filed, dated the twenty-third day of the month of May, two thousand one, handed down by the Court of First Instance in Administrative Law, located in Tegucigalpa, Municipality of the Central District, has been made compliant with the law, so that its confirmation is in order. **THEREFORE:** This Court of Appeals in Administrative Law, with jurisdiction at the national level, in the name of the State of Honduras, by a UNANIMOUS VOTE, with the Magistrate SAUL SUAZO LARA preparing the court's opinion, pursuant to Articles 303 and 304, Item c), and 134

of the Constitution of the Republic; 1, 2, Item a), 7, Item b), 9, 35, First paragraph, 89, 129, Item c) and 134 of the Law of Jurisdiction in Administrative Law. **RULES: FIRST:** The appeal filed is declared to be groundless. **SECOND:** The final judgment against which appeal was filed, handed down by the Court of First Instance in Administrative Law, located in Tegucigalpa, Municipality of the Central District, on the twenty-third day of the month of May, two thousand one, and which appears on folio number two hundred eight (208) to folio number two hundred eleven back (211b) of the first exhibit of proceedings, is **CONFIRMED AND ORDERS:** After this judgment becomes firm, that the appropriate certification be communicated to the Court from which it originated, so that it will proceed in conformity with the decision. WITHOUT COST. NOTICE IS THUS SERVED. **SIGNATURE AND SEAL.** FLORENTINO LÓPEZ MILLA. PRESIDING MAGISTRATING ACCORDING TO LAW. **SAÚL SUAZO LARA, REGULAR MAGISTRATE. PLUTARCO RIVERA CASTELLANOS, ALTERNATIVE MAGISTRATE. HUMBERTO OCHOA OCHOA, CLERK.**

Issued in the City of Tegucigalpa, Municipality of the Central District, on the fifteenth day of the month of October, two thousand one.

[Rubber stamp with a coat-of-arms in the center, reading: "COURT OF APPEALS IN ADMINISTRATIVE LAW, Tegucigalpa, Honduras".]

[illegible signature]

HUMBERTO OCHOA OCHOA

Clerk

APPENDIX M

THE GAZETTE

Official Newspaper of the Republic of Honduras

DEAN OF THE HONDURAN PRESS

Editor: Reporter Olman Ernesto Serrrano

No. 002003

YEAR CXVII TEGUCIGALPA, M. D. C. HONDURAS,
WEDNESDAY APRIL. 7. 1993 No. 27016

PRESIDENCY OF THE REPUBLIC

NATURAL RESOURCES
AGREEMENT No. 0008-93
TEGUCIGALPA, M. D. C. January 13, 1993

CONTENTS

Natural Resources
Agreement Number—0008-93—January 1993
FINANCE AND PUBLIC CREDIT
AGREEMENT NUMBER A.L. 183-93—
February 1993
CENTRAL BANK
Resolution Number 60-1/93—January 1993
NOTICE

* * *

CHAPTER VIII

OF THE FREEZING, STORING AND DEFROSTING OF THE PRODUCTS

Article 48.—For the freezing of the products it will be observed:

a) That the product is fresh and of good quality.

b) When methods of fast freezing are used the final product must not show signs of deformity, cracking, contusions and beatings.

c) When belt conveyers are used for transfer of the product in the freezers, it is necessary to adjust the speed of these in a way that the product is adequately frozen when it arrives to the other extreme of the freezing chamber.

d) The freezing can only be made in the freezing chamber.

e) During the freezing all kind of deformation of the blocks or containers must be avoided.

Article 49.—For the icing and packaging of the products it will be observed:

a) The frozen products must be iced, wrapped or packed to protect their quality during storing and commercialization for export as well as for internal consumption.

b) The products that are not packed, nor wrapped must be iced down after being taken out from the freezer.

c) Consider the icing process for shrimp an exception, which must be done prior to freezing.

d) For shrimp double icing no larger than 1/4" is permitted, placing later the product into individual packaging.

e) The temperature of the solutions (chlorinated water at 5 ppm must be used) used for the icing must not be higher than 5 C (five degrees centigrade).

f) The frozen products must be moved immediately to the storage chambers after being removed from the freezing chambers or from the icing.

g) The products in storage must be periodically examined to see that they have not suffered alterations.

h) The packaging must be made in boxes with the appropriate label, treated with paraffin and the size must have been approved during the registration process. They must have the following legend:

1st.—The name or trade name of the business that manufactured the product.

2nd.—The weight.

3d.—The legend "Product of Honduras" that can be also placed in another language.

4th.—A 3 (three) centimeter circle, "Inspected and Approved by the Department of Natural Resources of Honduras" and the number assigned to the establishment doing the processing.

5th.—In addition, it can have printed the different denominations of the size of the product.

i) The individual boxes can be crated in containers that have a minimum of 10 (ten) individual boxes, This crates must have the same information than the individual boxes.

* * *

CHAPTER XIX

OF THE SANCTIONS

Article 116.—The infractions to the present regulations will be classified as light, less serious and serious fault.

Article 117.—Are considered light faults:

a) To be found for the first time, during the supervision with non compliance of up to two Articles of this Regulation that are not considered in the group of serious faults.

* * *

Article 120.—The fines applied for infraction of light faults are:

a) Written warning.

Article 121.—The fines applied for infraction of less serious faults are:

a) Written warning and the payment of 2,000 Lps. (two thousand lempiras).

APPENDIX N

DECREE No. 154

THE NATIONAL CONGRESS
DECREES:

THE FOLLOWING FISHERIES LAW

CHAPTER VIII

CRIMINAL PROVISIONS

* * * *

Article 70—The following offenses shall be punished with [a fine of] THREE HUNDRED LEMPIRAS or THREE HUNDRED DAYS imprisonment:

1) Those who use [any of the following] for fishing: dynamite, gunpowder, explosives, carbides, sulfur, line or chemical salts of any kind.

2) Those who throw must, junk, syrups, acids, industrial wastes or minerals, drainage from the manufacture of rigging or rope, leather processing plants, leather tanneries, distilleries, stills into the ocean, rivers, streams, lakes, lagoons, or allowing them to run or filter to those places or to channel to them in any way, or who wash the tanks of steamships or oil tankers, oil processors, syrup processors, or who throw ashes

or garbage into bays, harbors, etc. or places less than five miles from the coast.

3) Those who destroy or harvest the eggs, or the offspring of fish, chelonians or other aquatic species for profit.

* * *

APPENDIX O

STATE OFFICE OF THE DEPARTMENT OF NATURAL RESOURCES

REPUBLIC OF HONDURAS

From the desk of the Secretary

RESOLUTION N. 030-95

The Department of Natural Resources and the Department of Fishing and Aquiculture.

CONSIDERING: That the protection and preservation of Natural Resources is the duty of the State and an unavoidable obligation of all citizens.

CONSIDERING: That the Executive Power through the Department of Natural Resources and its specialized departments, is the principal authority in issues dealing with fishing activities and any other activity related to it.

CONSIDERING: Catching fish, shrimp, lobster and snails in the Atlantic Ocean is very important for the national economy.

CONSIDERING: The establishment of closed seasons is a very important mechanism for the survival of species and will also create an ecological equilibrium.

THEREFORE

Using its authority and the application of Articles I, 5, 2nd numeral, and literal 7 "g"of the Fishing Law.

RESOLVES:

First To establish a closed season every year when dealing with shrimp, lobster and snails and related species in the Atlantic Ocean and in any waterways along the coast during the following dates::

a) Shrimp from the 1st of February to the 30th of June.

b) Lobster from the 16th of March to the 31st of July.

c) Snails from the 16th of March to the 30th of August.

Second: All dragging nets used by shrimp boats must carry the device for the exclusion of turtles (TDE), to guarantee the survival of this species.

Third: For the capture of lobster.

a) the traps will be made of wooden slats, except the top and bottom which will be one solid piece. The space between slats and the bottom must be at least 2 and 1/4 inches.

b) Fishing boats which engage in diving activities should have the right diving equipment such as pressure gauges, oxygen tanks, regulators, masks, fins, everything in excellent condition, as well as the compressors and filters, all should be

in excellent condition before setting out to sea.

c) Captains of diving boats will take a required course "Security regulations for Diving and the Environment" just before the beginning of each fishing year.

d) The minimum size to keep a lobster should be 5.5 inches or 14.5 centimeters of abdominal length.

e) The devices to measure the length of lobsters are obligatory on each vessel which carry out this fishing activity.

Fourth: The minimum size to keep snails (Strombus gigas) is 22 centimeters from the posterior channel to the siphonal channel.

Fifth: Infractions of the present Law will carry out a penalty as stipulated by the Fishing Law.

Sixth: This Resolution must be made public.

Tegucigalpa, Central District Municipality, the 5th of December of 1995.

LET IT BE KNOWN

RESOLUTION N. 030-95

RAMON VILLEDA BERMUDES
Minister

MARCO POLO MICHELETTI
General Director of DIGEPESCA

APPENDIX P

GENERAL LAW OFFICE OF THE REPUBLIC
REPUBLIC OF HONDURAS

LEGAL OPINION

The Undersigned, Attorney General emits legal opinion in relation to the inquiry based on the Article 80 of the Constitution of the Republic that was brought to this institution by the Attorney Maria Leticia Suazo de Guillén, registered in the Bar Association with number 5385, representing the society **CARIBEAN FISHERY CO S. DE R.L.** of the address of French Harbour, Roatan, Bay Islands. The purpose of this legal opinion is to determine A) If they are "laws" or they have the character of "laws"; B) If the resolution no. 003, issued the 31 of March of 1980 by the General Direction of Natural Resources; as well as the resolution no. 030-95 issued the 5 of December of 1995 by the titleholder of the mentioned entity (Today called Natural Resources and Environment) and the General Direction of Fishing and Aquiculture, are "regulations."

As following, I give answer to the inquiry in the following form:

A) Are they laws or have the character of "laws" the Resolutions no. 003 of the 31 of March of 1980 and no. 030-95 of the 5 of December of 1995?

The ability "to create, decree, interpret, reform, or revoke the laws" in Honduras corresponds solely to the National

Congress, according to the Article 205, numeral 1 of the constitution of the Republic, for which the established legislative process must be fulfilled as it is written in Title V, Chapter II, Articles 213 to the 221 of the own Constitution.

Consequently, because the Resolutions were not issued by the National Congress and Because they did not fulfilled the process of formation, sanction, and promulgation of all laws, the Resolutions numbers 003 and 030-95 are not "laws" in the constitutional and legal concept nor have character, effectiveness or force of laws, therefore, if they were applied like laws, the actions would be of absolute invalidity expressed constitutional dispositions have been violated.

B) Are "Regulations" the Resolutions numbers 003 issued the 31 of March of 1980 and 003-95 issued the 5 of December of 1995?

1) Resolution no. 003 of the 31 of March of 1980 was issued when the Code of Administrative Procedures of the 5 of April of 1930 was in operation. Under such Code, the Executive Power, the independent institutions and the municipalities issued as "Agreements" and never as "Resolutions" the regulations. These decisions are reserved to be taken in the administrative files in which the individuals take part.

On the other hand the Agreements that the regulations contained, as an act of protocol, must be published in the official Newspaper "La Gaceta" in order to come into operation. This requirement was not met by the Resolution n. 003 of the 31 of March of 1980.

In addition to Article 45 of the Fishing Law (Legislative Decree no. 154 of 19 of March of 1959), the fishing instruments, legal measures of the

captured species, and seasons of prohibitions will be subjected to the regulations of the related law. Article 5 establishes that the Executive Power (President of the Republic), through the Secretary of Natural Resources, is the superior authority in the matter of fishing and its connections, therefore it can establish and dictate measures through regulations.

In summary, the referred Resolution does not have a legal sense, because it does not represent any form of "Agreement", it was not published in the Gaceta, neither it was issued by the President of the Republic, through the Minister of Natural Resources. The document has, besides absolute invalidity, absolute incompetence because an incompetent authority issued it.

2) Resolution no. 030-95 of the 5 of December of 1995 was issued when the General Law of the Public Administration was already in use, in whose Article 120 it is established that the decisions that are taken in order to conclude the procedure in which the individuals, who represent the interested party, had intervened "will adopt the form of Resolutions. In addition article 118 of the mentioned law disposes that "they will be issued by an Agreement 1) . . . . 2) The acts of a general character that could be dictated when exercising the regulative power".

And even though Resolution no. 030-95 was unnecessarily published in the Official Newspaper La Gaceta, it lacks the requirement of the form of the Agreement as it must have been issued if the intention of the authority was to dictate acts of general character in exercising the regulative power, which, does not correspond to the titleholder of the Secretary of Natural Resources representing the General

Direction of Fishing and Aquiculture but to the President of the Republic through the Titleholder of this Secretary, according to what is stipulated in Articles 5 and 45 of the Fishing Law, reason why in the assumption to consider regulative norms, it would lack not only form but efficiency of the authorities that issued them and therefore invalidity of these regulations is produced.

Tegucigalpa, M.D.C., 24 of July, 2000

Seal and Signature
Attorney Hector Ramon Trochez
General Attorney of the Republic

APPENDIX Q

IN THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 01-15147-33

UNITED STATES OF AMERICA

Plaintiff/Appellee,

Vs.

DAVID HENSON McNAB, ET AL.,

Defendant/Appellant

DECLARATION BY SERGIO ZAVALA LEIVA ATTORNEY GENERAL OF THE REPUBLIC OF HONDURAS

1. I am the Attorney General of the Republic of Honduras and, as such, my responsibilities include the enforcement and protection of the Law of Honduras. According to Article 228 of the Constitution of the Republic, I am the Legal Representative of the State of Honduras and, as such, empowered to issue this opinion ["dictamen"].

2. The Government of the Republic of Honduras is not a common law ["jurisdicción consuetudinaria"] country. Honduras is a constitutional Republic, whose

codified and written continental legal system comprises numerous guarantees and guaranteed rights that protect due process.

According to Article 315 of the Constitution of the Republic of Honduras. the Constitution is the Supreme Law of the Republic.

The legal structure of Honduras is as follows: the Constitution of the Republic, International Treaties ratified by Honduras, the Laws (Statutes), the Regulations, Administrative Jurisprudence and the General Principles of Law[55].

The Constitution of the Republic is decreed and sanctioned by the National Constituent Assembly. The National Congress has the sole prerogative for ratifying international treaties, as well as creating, decreeing, interpreting and revoking laws (statutes). The Constitution also confers upon the officeholder of the Executive Branch the power to issue regulations, which, in turn, acquire force of law.

Regulations (which must be issued in the form of *Acuerdos*[56]) [Translator's Note: Since *Acuerdo* can be rendered "agreement," "decision" and "accord" and in this context defies a one-word translation into English, hereinafter it will be left in Spanish in italics] are general rules of conduct applicable to all those who may be affected thereby.

The Constitution empowers the President of the Republic to issue Regulations (Article 245, Item 11), and he

---

[55] Article 7 of the General Law of Public Administration.

[56] Article 118, Item 2, of the General Law of Public Administration.

is the only person expressly empowered by the law to do so[57]. The Constitution also sets forth that, in order for the regulations to have legal effect, they must be authorized by the appropriate Secretaries of State (Article 248).

Both the Laws and the Regulations become effective when they have been validly issued and published in *La Gaceta*, which is the equivalent in Honduras to the *Federal Register* of the United States.

Other actions taken by the Administration in Honduras are those called "Resolutions," which are actions to enforce the laws and regulations; accordingly, resolutions are administrative or judicial decisions that are designed to conclude a procedure or dispute in which a concerned party takes action that is within the jurisdiction of the government office that issues it or else in the jurisdiction of the court. Judicial resolutions are also called judgments.

The judicial system of Honduras includes the Courts of First Instance of Administrative Affairs, which are responsible for resolving disputes related to administrative matters. A decision by a Court of Administrative Affairs can be appealed to the Court of Appeals of Administrative Affairs.

3. There are cases in which the meaning and the interpretation of the laws of Honduras become important for other countries and foreign states. An example is the case that concerns us, in which the enforcement of the so-called "Lacey Act" makes a person or an entity either civilly or

---

[57] The Constitution sets forth that the powers of the functionaries are "by express text" and not tacit, i.e., that it requires the actions of the functionaries to have been previously authorized in a law in order for them to be able to carry them out. *"(Article 321—The servants of the State have only those powers that are expressly conferred upon them by the law. Any act performed by them outside of the law is null and void and entails liability)."*

criminally liable under the laws of the United States if it is shown that the party has violated the laws of Honduras.

4. In Honduras, to determine whether a person or an entity has violated a certain Law, not only the allegedly violated law must be considered, but also the existing legal framework together with the rights and guarantees set forth by the Law. Likewise, there are General Principles of Law that must be considered, since they are an integral part of the laws and that are the product of the evolution of Law in Honduras and which must be considered. For this reason, the Constitution in Article 90 thereof states that: *"No one can be judged except by a judge or court of competent jurisdiction with the formalities, laws and guarantees set forth by the Law."* (Emphasis added). This is a manifestation of the codified and written continental legal system that governs in Honduras.

In our system, ignoring the legal context, formalities, existing legal rights and guarantees would be a violation of the guarantee of judicial protection, which grants the accused the right to make use of any effective resource that protects him against acts that violate his fundamental rights as recognized in the Constitution, in International Treaties and in the Law and, therefore, a serious violation of due process.

5. The Constitution sets forth that any person or entity is entitled to submit petitions to the authorities whether for reasons of private or general interest, as well as obtain a prompt reply by the legal deadline (Article 80). To do so, the Law of Administrative Procedure sets forth a procedure to be followed within the administration, designed to guarantee, to the extent possible, that the final product is, legally correct.

The procedure in the case of a petition of an interested party to the administration is initiated by means of a brief addressed to the body empowered to resolve the

matter. The body with competent jurisdiction to decide [the issue] will request the mandatory and optional reports and opinions ["dictámenes"] from the consulting bodies. In all cases, it is necessary for an opinion ["dictamen"] of the Legal Department to be requested before issuing the resolution. The procedure initiated with the petition will end with the Resolution, in which all of the issues posed by the concerned parties and any resulting from the case will be decided.[58]

Based on the principle that the powers of the functionaries are "by express text,"[59] only those functionaries upon whom the laws confer powers to issue resolutions can validly issue documents that contain the opinion ["opinion"] of the body they represent.

The Constitution of the Republic states that the Executive Power is exercised by the President of the Republic (Article 235). The President of the Republic is responsible for the supreme direction and coordination of the Public Administration (Article 11, General Law of Public Administration) and has the power to resolve matters (Article 245, Item 11 of the Constitution).

The Secretaries of State (also known as "Ministers") are the direct collaborators of the President of the Republic in the corresponding Office (Article 247 of the Constitution, Article 33 of the General Law of Public Administration). The Ministers are empowered to issue resolutions in matters falling under their jurisdiction[60].

The Under Secretaries of State (also known as Vice-Ministers) are the direct collaborators of the Secretary of

---

[58] Articles 61, 72, 83 of the General Law of Administrative Procedure.

[59] *See* footnote no. 3.

[60] Article 36, Item 8, of the General Law of Public Administration.

State and the ones who may assume the functions of a Secretary of State by Law in those cases provided for. They also decide in those matters delegated to them by the Minister.[61]

The General Directorates, which are departments designed for the execution of specific programs and projects, are also part of the Secretariats of State. The person in charge of them also has the power to rule on matters falling under his jurisdiction.[62]

Another organ of the Secretariat of State, which, unfortunately, to the detriment of the accused, has had great significance in the case that concerns us because its involvement has been considered "critical" in the decisions made by the Court of Alabama is the General Secretariat, which is nothing more than the instrument of communication for the Secretariat of State. Its officeholders have certification duties.

The functions of the General Secretariat, pursuant to Articles 27 and 28 of the Regulations of the Organization, Operation and Jurisdiction of the Executive Branch, are limited to the following: receiving requests, and petitions and registering them appropriately; seeing that the matters are processed by the established deadlines; keeping a record of the decrees and *acuerdos* issued in relevant matters; keeping a record of the official correspondence and sending it to the appropriate party; keeping the General Archive of the Office; authorizing the signature of the Secretary of State or the Under Secretary and those measures, decisions or resolutions issued by them; notifying the concerned parties of the

---

[61] Article 36, Item 19, of the General Law of Public Administration.

[62] Article 30 of the Regulations of the Organization, Operation and Jurisdiction of the Executive Branch issued to enforce the General Law of Public Administration.

provisions or resolutions; transmitting to the concerned parties the decisions issued on relevant matters; coordinating and supervising legal services, i.e., assigning the case files to the different legal advisors and exercising oversight to see that the steps are carried out in order. It is also responsible for institutional communication and management services of external cooperation.

The Secretary General is not authorized to resolve any type of process, except in those matters expressly delegated to him by the Minister through a Delegation *Acuerdo* that meets all of the requirements set forth by the Law and it is required that his resolution be part of a pre-existing procedure.

As stated in the powers of the aforementioned General Secretariat, its officeholder does not issue legal opinions ["opiniones o dictámenes"] at any time, either within the internal proceedings of the Ministry or much less so for outside the Institution. This would violate the Honduran legal structure.

The opinions ["dictámenes u opiniones"] issued by the advisory organs of the Ministry, such as the legal and technical departments, are solely for internal use and their purpose is to inform the officeholder of the body of the administration on the matter it is going to resolve. They have no outward legal effects, because these advisory organs cannot issue opinions ["dictámenes u opiniones"] outside of the internal proceedings that so require them. To do so would be totally irregular and illegal under the laws of Honduras.

The fact that functionaries without competent jurisdiction have participated in an irregular manner in this criminal process is something so serious for the Law of Honduras that even the Secretary of State for Agriculture and

Livestock has had to intervene to disqualify this participation, which has been defined by the Human Rights Commissioner, in his report, as a violation of the accused's Human Rights.

6. Unfortunately, most of the documents that were used by the Court to inform itself about the proper interpretation of the Law of Honduras, which documents were furnished by the Department of Justice of the United States[63], present, among other things, some of the following problems: 1) They come from functionaries without powers to issue them;[64] 2) They failed to follow the procedure set forth in the laws of Honduras; and 3) They were misrepresented before the Court of the United States, since, under the laws of Honduras, they do not have legal effect because they do not express the will of the State.

In Honduras, this type of violations of the law is seen as a violation of Due Process. Had the appropriate procedures been followed, the most likely thing is that the Court would have seen the facts with greater clarity and would not have had the difficulties that gave rise to an erroneous interpretation of the Law of Honduras, which would have been shown that the violations alleged in the case did not exist.

---

[63] Some documents presented to the court were obtained from the Office of the Public Prosecutor by the Economic Advisor of the Embassy of the United States in Honduras which confuses even more the "procedure" that the Department of Justice of the United States followed to obtain its evidence.

[64] Examples: a) Secretary General and some legal advisors of the Ministry of Agriculture and Livestock; b) Documents of the Office of the Public Prosecutor in charge "of the investigation of crimes and the exercise of public criminal action" (Law of the Office of the Public Prosecutor) when a violation of the Fisheries Law is not subject to criminal prosecution since it is merely administrative.

7. The basis for the allegations against the accused is that they have violated the following: (1) Resolution 030-95, in relation to the limit on the size of the lobsters; (2) *Acuerdo* 0008-93; with regard to rules of hygiene for seafood products, and (3) Article 70. Item 3 of the Fisheries Law of 1959, in relation to aquatic species with eggs.

8. **Resolution 030-95**. This Resolution, which, inasmuch as its contents are no more than Regulations issued in an incorrect form,[65] was declared null and void *ab initio* and without legal force or effect, due to the fact that it was not issued according to the Constitution and the Laws of Honduras. For this reason, it cannot nor should be the grounds for determining the existence of a violation of the Law of Honduras in this case.

The nullity *ab initio* of Resolution 030-95, among others, was determined in the judgment of the Judge of Administrative Affairs (May 23, 2001). This decision was confirmed by the Court of Appeals of Administrative Affairs (October 11, 2001).[66] Both judgments of the Courts of

---

[65] Because of its regulatory content, it should have been issued by in the form of an *Acuerdo* and not as a Resolution, since it is not a decision that settles any dispute or procedure.

[66] It should be mentioned that the reasons set forth by the Department of Justice of United States for disagreeing with the decision of the Court of Administrative Affairs (Govt. Br. page 31, footnote 12) denote a lack of clarity they have with regard to the Law of Honduras and show the injustice committed. (1) The Courts of Administrative Affairs have at no time said that the President can issue administrative *resolutions*. As we have mentioned, there are several functionaries with the power to rule on matters in their jurisdiction within the administration. The President has the sole power to issue regulations, i.e., general rules of conduct. (2) The Department of Justice of the United States apparently still does not understand the difference between a Resolution and Regulations. Resolutions must be limited to conclude (resolve) a procedure in which a private party takes action as a concerned party (Article 20, General Law of Public

Administrative Affairs have been recognized by the Secretary of State in the Offices of Agriculture and Livestock as being of binding compliance and final, who also recognizes that Resolution 030-95 is null and void *ab initio* and that it is not a representation of the Law of Honduras.

The Court of Administrative Affairs included language in its judgment stating that the annulment of Resolution 030-95 (and other resolutions) was "only for purposes of its annulment and future inapplicability: This Resolution does not confer rights for claims." This language has led the Department of Justice of United States to assert that the decisions of the Courts of Administrative Affairs have no impact on the prosecution pending in this case. The position of the Department of Justice in this regard is incorrect, since these decisions are of binding compliance.

The judgments of the Courts of Administrative Law clearly set forth that Resolution 030-95 is null and void, but they also clearly state that it can no longer be enforced as of the date or which these decisions become final. This is explained in the following way: 1) **Annulment**: That the assumption of the validity of Resolution 030-95 ceased to exist and that, therefore, it is officially nonexistent for any persons who could have been affected by it; and 2) **Future Inapplicability**: That Resolution 030-95 can no longer be applied in any Administrative or Judicial proceeding, including all of those proceedings awaiting a final resolution; No individual or entity can be sanctioned for failing to

---

Administration) and the Regulations are the acts of a general nature or general rules of conduct applicable to all those who may be affected thereby. The Resolutions annulled by the Courts of Administrative Law were general rules of conduct and not decisions that resolved a given conflict; therefore, they were treated by these courts as *Regulations* and not as *Resolutions*, also clarifying the violation of the Law by the existing defect in form by calling them Resolutions and not *Acuerdos* as was appropriate.

comply with it, even when it is shown that the violation occurred before being declared null and void, because the resolution is null and void.

It is important to stress the clarity with which the Court of Appeals of Administrative Affairs sets forth the nullity *ab initio* of the resolutions, by stating that if the regulations are not issued by the President of the Republic and authorized by the Minister of the [appropriate] Sector, they would never have had legal effect.

The reason that the laws of Honduras and, in particular, the Court for Administrative Appeals, with its specific language in its judgment, only set forth its future inapplicability is to guarantee the legal security of the State, protecting it from any damages and losses that could have been caused by the enforcement of an act that is null and void as a matter of law. This means that final cases in which the annulled rules were enforced while they were still assumed to be valid cannot be reopened.[67]

The fact that certain situations are guaranteed for the protection of the State and society has no effect on the type of nullity. This is explained in the following manner: The Resolutions were annulled *ab initio*, i.e., it is considered that the Resolutions were never laws of Honduras but the effects of the decision are *ex tunc*, i.e., it does not affect final administrative cases, only those that are still pending at the time of the judgment.

---

[67] An exception to this rule would be in the criminal context: in criminal trials in which a final condemnatory judgment is imposed based on the application of an administrative act that is null and void as a matter of law, the constitutional guarantee of the retroactivity of the law to the benefit of the delinquent is applicable (Article 96).

It should be added that, under the laws of Honduras,[68] if an attempt had been made to sanction the accused for failure to comply with Resolution 030-95, the defendant could have made use of the resources and guarantees that the Law conferred upon him, claiming nullity as a matter of law of the act during the trial. If the Court were in agreement with this and declared the Resolution to be null and void, the defendant would not have been sanctioned, even when there existed an assumption of validity of the Resolution until it was declared null and void.

The judgments of the Courts of Administrative Affairs have a decisive impact in the prosecution pending in this case for the following reasons: 1) The nullity of Resolution 030-95 is *ab initio*, i.e., it was never the Law of Honduras; 2) the judgment of the Courts of Administrative Affairs prevents any court from continuing to enforce 030-95 in any pending case awaiting final resolution, such as in the case that concerns us; 3) the judgment of the Courts of Administrative Affairs confirms that, if the accused had been put on trial in Honduras for violating Resolution 030-95, he would have been able to demonstrate his innocence, since this Resolution was null and void.

9. ***Acuerdo* 0008-93.** The purpose of the Regulations (equivalent to an Administrative Regulation of the United States) contained in *Acuerdo* 0008-93 was to state the hygienic and sanitary inspection rules for seafood products. It was issued to implement Decree No. 40 (which is equivalent to a "statute" of the United States), dated May 16, 1973. This Decree was expressly repealed by Article 42 of Decree No. 157-94, which went into effect on January 13, 1995, and, therefore, it had no validity during the time in which the lobsters involved in this case were caught.

---

[68] Law of the Jurisdiction of Administrative Affairs (Article 30), among others.

The repeal of Decree No. 40 has the effect, under Honduran Law, of repealing all of those regulations promulgated under this Decree, including *Acuerdo* 0008-93. This longstanding principle of law, both in Honduras and in most legal systems, has been precisely reiterated by the National Congress in its interpretation of Article 43 of the Civil Code, issued by means of Decree 198-2001, which, in its relevant part, states literally:

> ". . . the total or partial express repeal of a law leaves without legal value or effect the general regulations and the specific regulations in toto, or in that part referring to the reformed article or articles when the reform is partial, that the Executive Branch, through the Secretariat of State, has issued to implement the provisions of the repealed Law . . . ."

In Honduras, the interpretive laws are part of the interpreted laws. Thus, they are considered applicable from the date of the interpreted laws.

Therefore, the Regulation contained in *Acuerdo* 0008-93 had no legal validity or force during the relevant period of time in this case.

10. **Article 70 of the Fisheries Law**: Similarly, Article 70, Item 3, as it appeared in Decree 157 of the Fisheries Law of 1959, which has been considered as a Law of Honduras that has been violated, in this case was specifically repealed by Decree 245-2000, which went into effect on February 5, 2001, and which replaced Article 70 in its entirety, with a new and amended Article 70. Therefore, the original Article, under Honduran Law, ceased to be valid and to have legal effect when its reform went into effect. The new Article 70, adopted by Decree 245-2000, contains no prohibition related to the eggs of aquatic species.

The same Secretary of State in the Offices of Agriculture and Livestock, as the superior authority in this matter, clearly states in his Resolution that the reform contained in Decree 245-2000 left invalid and without legal effect the previous provision contained in Article 70, Item 3, of the Fisheries Law of 1959, and that, under Article 96 of the Constitution of Honduras, the repeal of Article 70, Item 3, has retroactive effect to the benefit of those accused in the pending criminal charges.

It should be stressed that Article 70, Item 3, of the Fisheries Law of 1959 was duly interpreted by the corresponding authorities interpreted it[69] in the following manner: This article prohibited the destruction or collection of the eggs or the spawn of the aquatic species but not the destruction or collection of the egg-bearing species.

This interpretation has logical support, since it cannot be thought that this article prohibited the collection of all the egg-bearing aquatic species, due to the fact that this would include species such as shrimp and fish, among others, which is not only unnecessary but commercially impossible to comply with and, in addition, would do tremendous harm to the economy of the country.

Therefore, Article 70, Item 3, of the Fisheries Law ceased to have legal validity when it was repealed, which, when applied retroactively, causes the related article to be unenforceable in the case; in addition, it never penalized the conduct supposedly imputed to the accused.

11. **Reference to the involvement of the "amici curiae"**: The concept of the *amici curiae* is a novel and revolutionary element in international law by empowering or authorizing any concerned person to submit his written

---

[69] As substantiated in the Statement of the General Directorate of Fisheries and Aquaculture.

opinion on items submitted for discussion; in fact, in the Inter-American system, this concept has had a notable development with the involvement of even non-governmental organizations in the hearings held by the Inter-American Court of Human Rights.

[illegible signature]

SERGIO ZAVALA LEIVA

Attorney General of the Republic

[Rubber stamp: "OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC. {coat-of-arms} ATTORNEY. HONDURAS, CENTRAL AMERICA".]

APPENDIX R

SAG **SECRETARIAT OF AGRICULTURE AND LIVESTOCK**

By producing more, we will preserve peace

Secretariat of State in the Offices of Agriculture and Livestock, Tegucigalpa, Municipality of the Central District, on the fifteenth day of the month of November of the year two thousand one.

CONSIDERING: In order to act on the Special Report with Recommendations, issued by the National Human Rights Commissioner, on the eighth day of November of the year two thousand one, related to the complaint filed by Mr. Steven Guillén, acting on behalf of Mr. David Henson McNab before the aforementioned Commissioner, because of considering that the Affidavit given by Liliana Paz P., Esq., on the tenth day of August of the year two thousand one, contains legal errors.

WHEREAS the Legal Department of this Secretariat of State, after reviewing the facts alleged in the related report, considering in addition the decisions of the Courts of Administrative Law related to the case and after having made the relevant consultations, is of the opinion that what is set forth by the National Human Rights Commissioner in his report and in his Recommendations, is totally correct, so that it was of the opinion that the aforementioned recommendations be adopted, as well as the appropriate corrective measures;

WHEREAS, in the Affidavit given by Paz P., Esq., in her capacity as Secretary General of this Secretariat, an error of law was incurred, according to the examination the National Human Rights Commissioner made of the matter, based on the nation's laws and on international conventions and treaties signed and ratified by the Republic of Honduras;

WHEREAS, according to Article 43 of the Organizational Law of the Human Rights Commissioner, this Secretariat of State is obligated to respond in writing to the Commission with whatever is relevant with regard to the Special Report with Recommendations issued by that national institution in charge of guaranteeing the effectiveness of the rights and freedoms recognized in the Constitution of the Republic and the International Treaties and Agreements ratified by Honduras;

WHEREAS there are grounds for issuing the corresponding Resolution to give the answer required by the Law to the Recommendations of the National Human Rights Commissioner and to take the corrective measures under Law.

Therefore,

HE RESOLVES:

FIRST: On the basis of the Special Report and Recommendations of the National Human Rights Commissioner, to disqualify as an error of law the Affidavit given by Liliana Paz P., Esq., on the tenth day of August of the year two thousand one, as well as any other statement contrary to what is set forth in this Resolution, inasmuch as it contradicts the Constitution of the Republic, the laws of the country, the international treaties and conventions and the principles of law.

SECOND: That the official position of this Secretariat of State, as well as the correct sense and scope of the challenged rules, is that set forth below:

1) **Resolution 030-95.** According to a decision of the Court of Administrative Law dated May 23, 2001, Resolution 030-95 and other resolutions were totally rendered null and void, but only for the purposes of making them null and void and inapplicable in the future. However, the final and firm judgment of the Appeals Court of that same Court dated October 11, 2001, expands the ruling by determining that the contested Resolutions are null and void and, therefore, do not produce legal effects because of having been issued by an authority without jurisdiction erroneously and beyond the powers that the law grants to the issuer thereof. This is owing to the fact that they contain regulations and, since they had not been issued by the President of the Republic and authorized by the corresponding Secretary of State, **they never had the force of law** pursuant to what is set forth in the Constitution of the Republic, Articles 245, Number 11, and 248.

   The aforementioned decision of the Court of Administrative Law has a retroactive effect in criminal matters pursuant to the Constitution of the Republic in Article 96 thereof, since it does not require the legal rule to be criminal in order for it to be retroactive, since it is sufficient for it to favor the criminal or defendant in order for it to be applied in any criminal matter, as is in the case of Mr. McNab.

2) **Decision ["Acuerdo"] 0008-93:** Pursuant to the Legal Principles of Law, confirmed by Decree No. 198-2001, recently issued by the National Congress, the express repeal of a law makes the regulations

issued by the Executive Branch to enforce the repealed law without value or effect, unless there is an express provision in the repealing law. Therefore, Decision ["Acuerdo"] 0008-93, issued to enforce the Meat Industrialization (Executive Decree No. 40 of May 16, 1973) was repealed in its entirety and rendered without any value or legal effect as of January 13, 1995, when the Plant and Animal Health Law went into effect (Decree 157-94), which repeals the aforesaid Meat Industrialization Law.

3) **Article 70 of the Fisheries Law:** This article, as amended by a Decree of the National Congress No. 245-2000, rendered invalid and without legal effect the provisions originally contained in said article. Therefore, those provisions that were part of the original article and which were omitted in its amendment, ceased to have legal validity when Decree 245-2000 went into effect, among them, those contained in Items 3 and 7 of the original Article 70. Since those omissions benefit the defendant, their retroactive application in the criminal case brought against Mr. McNab is likewise guaranteed by Article 96 of the Constitution.

THIRD: Communicate to the officials of this Secretariat of State, by means of a circular, that rules not in effect must not be enforced nor must they alter the meaning and scope thereof;

FOURTH: Copy to the National Human Rights Commissioner and communicate by a Certification to the concerned party this Resolution, which contains the official position of this Secretariat of State in response to the Special Report with Recommendations of the National Human Rights Commissioner with regard to the contested acts that appear in the Affidavit rendered by Liliana Paz, Esq., and a

copy of this report should be attached. LET THIS BE COMMUNICATED.

[signature]
GUILLERMO ALVARADO DOWNING
Secretary of State, of the Offices
of Agriculture and livestock

[signature]
LILIANA PATRICIA PAZ PAGUAGA
Secretary General

Tegucigalpa, Municipality of the Central District, on the sixteenth day of the month of November, two thousand one.

[There are two partially illegible impressions of a rubber stamp with a coat-of-arms in the center reading: "{illegible} OFFICES OF AGRICULTURE AND LIVESTOCK, SECRETARY GENERAL, TEGUCIGALPA, HONDURAS, CENTRAL AMERICA".]

Boulevard Miraflors, Avenida La FAO, Tegucigalpa,
M.D.C., Honduras, Central America
Switchboard 232-8423, 232-6190; Fax 232-5375
Post Office Box 309

APPENDIX S

LA GACETA
(Gazette or Newsletter)

Official Newspaper of the Republic of Honduras

Publisher: Licenciado (*A person with the equivalent of a Masters Degree*) Juan Ramón Duran

Tegucigalpa, M.D.C. (*Central Municipal District*)
Honduras, Friday, January 13, 1995 Number 27,552

CONTENTS
Decree Number 157-94
November 1994

ECONOMY
Resolution Number 416-94—December 1994

PUBLIC TREASURY AND CREDIT
Agreement Number A.L. 2399/94—December 1994
Agreements Number 002-A and 002-B—January 1995

Announcements

LEGISLATIVE POWER

DECREE Number 157-94

National Congress

WHEREAS: It is the duty of the State, to watch over and promote the preservation of the national agricultural patrimony by means of the enactment of judicial ordinances and other norms that contribute to this goal.

WHEREAS: The protection of the environment, of natural resources, and human health are closely related to the activities that are developing in the agricultural sector and particularly to the preventive measures, the control and eradication of plagues and diseases in plants and animals that affect national production.

WHEREAS: The modernization and reconciliation of the phyto and zoosanitary laws and norms, are indispensable requirements for the promotion of technological and informational development and are basic elements of the regional integrative process.

WHEREAS: The processes of economic reactivation and regional integration demand modernization on the State level, in its phyto and zoosanitary organization and structure, in order to attend to the demands of the aperture in International Agricultural Commerce, without diminishing plant and animal safety.

WHEREAS: The preservation of the species through the protection of fauna and flora is an indispensable condition for the maintenance of ecological equilibrium of the Honduran nation

WHEREAS: It corresponds to the Secretary of State at the Office of Natural Resources to define and execute the policies for the agricultural sector.

THEREFORE

DECREES

The following:

PHYTO ZOOSANITARY LAW

FIRST TITLE

GENERAL ORDINANCES

CHAPTER I

OF THE LAW'S OBJECTIVE

Article 1.—This Law has as its goal to watch over the protection and health of plants and animals and over the conservation of its products and byproducts, against the harmful act of plagues and diseases that bear economic, quarantine, and human importance.

Article 2.—In order to fulfill the objectives of this Law, the Secretary of Natural Resources, hereinafter SRN, will focus his efforts to strengthen the phytozoosanitation, mainly in that which refers to the diagnosis and epidemiologic vigilance, agricultural quarantine, the control of agricultural inputs, control of products that are of animal and plant origin, the programs and campaign to control and/or eradicate plagues and diseases, the accreditation of professionals and companies for phyto-zoosanitary programs, and the mechanisms for national and international reconciliation and coordination.

CHAPTER II

OF THE CREATION AND COMPETENCE OF THE NATIONAL SERVICE OF AGRICULTURAL HEALTH

Article 3.—The planning, normalization, and coordination of all activities on a national, regional, provincial and local level, relative to plant and animal health correspond to the Executive Power through the SRN. For this purpose the National Service of Agricultural Health *(Servicio Nacional de Sanidad Agropecuaria)* hereinafter SENASA, is created, as the General Management of the

SRN, which will count on two technical subsidiary offices: Plant and Animal Health.

SRN will jointly participate with other entities of the Public and Private Sector in the definition and application of the policies related to the preservation of natural resources, human and environmental health, according to the laws.

Article 4.—With the objective of strengthening the coordination, cooperation and counsel of the activities to be carried out by SENASA, national committees of health . . .

CHAPTER NINE
OF THE FINAL AND PROVISIONAL ORDINANCES
ONLY CHAPTER
OF THE FINAL AND PROVISIONAL ORDINANCES

Article 42.—The Law of Plant Health (Decree No. 23, of January 31, 1962), the Law for the Manufacturing and Commercialization of Concentrated Feed for animal use (Decree No. 91, November 24, 1969), the Law for the Industrialization of Meats (Decree Law No. 40, May 16, 1973, and the Law of Animal Health (Decree Law No. 156, November 18, 1974, are repealed.

Article 43.—The Executive Power by means of the Secretary of State in the Office of Natural Resources will issue the rules of this Law, within a time limit not greater than ninety (90) calendar days, counted from the date that this decree takes effect.

Article 44.—This Law will take effect on the date of its publication in the Diario Oficial La Gaceta.

Given in the city of Tegucigalpa, Municipality of the Central District, in the Sessions Hall of the National Congress on the fourth day of the month of November of nineteen hundred and ninety four.

CARLOS ROBERTO FLORES FACUSSE
PRESIDENT

ROBERTO MICHELETTI BAIN
Secretary

SALOMON SORTO DEL CID
Secretary

To the Executive Power

SALOMON SORTO DEL CID

Therefore: Execute

Tegũcigalpa, D.C. November 15, 1994
CARLOS ROBERTO REINA IDIAQUEZ
Constitutional President of the Republic

The Secretary of State in the Office of Natural Resources
Ramón Adolfo Villeda Bermúdez

PRESIDENCY OF THE REPUBLIC
THE ECONOMY

Resolution No. 416-94

SECRETARY OF STATE IN THE OFFICES OF TRADE AND ECONOMY. Tegucigalpa, M.D.C., December 23, 1994

VIEWED: To resolve application number 199-94 presented on November 2, 1994 by Attorney Francisco Daniel Gómez Bueso, whose qualifications are known and who resides in Tegucigalpa, Francisco Morazán as the Legal Attorney for "PLASTICOS INTERNACIONALES, INC." ('PLASINTER') company, R. T. N. AEMTSI - 1 *(no translation available for the initials, nor the acronym)* whose address is in San Pedro Sula, Cortes, located on kilometer 2 on the road to Ticamaya, South-North at 1 kilometer of Boulevard San Pedro Sula-Progreso, along the road Calpules-Choloma, and contracted to request authorization to function under the Rules for Provisional Imports in accordance to the ordinances of Decree Number 37, dated December 20, 1984 and Decree Number 190-86, October 31, 1985 and that it be granted the corresponding benefits and rights.

WHEREAS: Decree number 37, December 20, 1984 and Decree number 190-86, October 31, 1986 authorize companies and private entrepreneurs dedicated to industrial or agroindustrial activities to have recourse to the Rules for Provisional Imports, that they can establish themselves in the country with machinery, equipment, tools and other imports in order to produce articles which as a whole would be exported to non-Central American countries.

WHEREAS: The benefit of total exemption of the payment of the Income Tax granted under the Rules for Provisional Imports was repealed according to Decree number 135-94, October 12 1994.

WHEREAS: The product for export by the petitioner is taxed with an import tax as established in the Tenth Article of Decree number 873 of December 26, 1979.

WHEREAS: Based on the analysis and evaluation in the report presented by the General Management of Production and Goods the company is authorized to operate under the Rules of Provisional Imports, according to the legal ordinances that regulated the matter.

WHEREAS: That it is necessary to indicate the conditions within which the State grants benefits to industrial companies or to agroindustrial businesses to guarantee the objectives of the policy for fomenting exports.

WHEREAS: That for all that which has been previously stated, it is admissible to consent in part to that which has been requested.

THEREFORE: The Under-Secretary of the State in the Offices of Trade and Economy, applies Article 3 of Decree number 37, December 20, 1984 and Articles 1,2,4,7,8,9, **modified** and adding Article 2 of Decree Number 190-85, October 31, 1986 and Articles 3, 8, 18, 19, 25 of its Rules.

RESOLVES

1. To authorize Company "PLASTICOS INTERNACIONALES, INC. DE C.V." (PLASINTER) located in San Pedro Sula, Cortés, at kilometer 2 on the highway to Ticamaya, South-North, at Kilometer 1 of Boulevard San Pedro Sula-Progreso, along the road

Calpules-Choloma, to have recourse to the Rules of Provisional Imports, which will dedicate itself to the production of plastics and all types of packaging, purchase and sales or resins and dyes and any activity of licit trade in the Republic of Honduras, to export to non-Central American countries, under the shelter of the Rules of Provisional Imports.

2. Company "PLASTICOS INTERNACIONALES, INC., DE C.V." (PLASINTER) in order to be able to carry out the activity as described in the previous number, will enjoy the following financial benefits: suspension of payment of customs rights, consular rights, the 5% tax for administrative customs services, established by means of Decree Number 85-84, May 24, 1984 and any other taxes and additional payments, including the general sales tax generated by importing machinery, industrial equipment, primary materials, and imports that figure in Ordinance DGPC-IT/267-94, December 15, 1994, issued by the General Management of Production and Goods to benefit the aforementioned company and which may be suspended, modified or canceled by the Secretary of Trade and Commerce, by request or task of the interested party, according to that which is provided in Article 25 or Agreement number 547-87 of the sixth of May of nineteen hundred and eighty seven of the Rules of Provisional Imports.

3. Grant to the petitioner the exoneration for the payment of taxes for exports, as stated in Article Ten of Decree number 873 of December 26, 1979.

4. To deny the petitioning company the total exemption of the payment for income tax, according to that which is stipulated in Chapter VI, Article 16 of Decree number 135-94, October 12, 1994.

5. The aforementioned company must fulfill the following obligations: a) Make available to the Secretary of Treasury and Public Credit and to the Secretary of Trade and Economy a sworn statement which will detail the use that has been made of all imported goods during each semester, the same as all information relative to the value, quantity, class or the destiny for all exported goods This statement must be presented during the months of January and July of each year. b) To maintain an appropriate register that allows for the control of imported and exported goods. c) To initiate its exportable production within the six months following the date on which the beginning of operations is authorized under this instrument or of its extension if that is the case. d) To carry out its export project according to that which is stipulated in this Resolution of Authorization. e) To meet export deadlines. f) To obtain authorization from the Secretary of Economy and Trade for any modification in the initial plans that served as the basis for accepting the Rules. g) To give the appropriate authorities all facts and information they may request in order to realize oversight and control of its operations. h) Whatever else determined by appropriate authorities.

6) To deny company "PLASTICOS INTERNACIONALES, INC. DE C.V." (PASINTER), the right to import goods under the protection of the Rules of Provisional Imports as described in letter "F" of ordinance DGPC-IT/267-94, on which this Resolution was based because . . .

LA GACETA
(Gazette or Newsletter)

Official Newspaper of the Republic of Honduras

Publisher: Reporter Olman Ernesto Serrano

Tegucigalpa, M.D.C. (*Central Municipal District*)
Honduras, Wednesday, April 7,199 Number 27,016

CONTENTS

Natural Resources
Agreement Number 0008-93—January 1993
Treasury and Public Credit
Agreement Number A.L. 183-93—February 1993
Central Bank
Resolution Number 60-1/93—January 1993

ANNOUNCEMENTS

PRESIDENCY OF THE REPUBLIC
NATURAL RESOURCES
Agreement no. 0008-93
Tegucigalpa, M.D. C., January 13, 1993

THE PRESIDENT OF THE REPUBLIC

WHEREAS: It is the objective of the Government of the Republic to protect the health of the population and the national economy.

WHEREAS: Fish products, by their inherent organoleptic characteristic and the ease by which their basic composition is altered, need stringent technological, hygienic, and sanitary control in their processing.

WHEREAS: Fishing is the third most important entry of the national economy.

WHEREAS: Hygienic sanitary normalization and its application by means of Official Inspection over the production and industrialization of products that are of animal origin fall under the jurisdiction of the Secretary of State in the Office of Natural Resources.

THEREFORE: By applying Decree Law Number 60, May 16, 1973 which contains the Law of Industrialization for Meat, "AGREES: to issue the following RULING FOR INDUSTRIAL AND SANITARY HYGIENE INSPECTION OF FISH PRODUCTS".

CHAPTER I
OBJECTIVES

Article 1.—This Ruling normalizes Industrial Inspection and Sanitary Hygiene for fish products throughout the national territory.

Article 2.—The appropriate authority in the execution of this Ruling is the General Management of Cattle of the Secretary of Natural Resources, through the Department of Animal Health in the Section of Official Inspection of Products that are of Animal Origin (SIOPOA).

Article 3.—Subject to Official Inspection are all fishing boats, collection centers, and plants that catch, collect, industrialize and pack fish products.

In accordance with that which is offered in this Ruling the only products that can be sold are those that have been inspected.

Only those fishing products processed in plants approved for that very purpose can be destined for export.

Article 4.—Fishing products that remain subject to this ruling are:

Fish, crustaceans, molluscs, anuran reptiles and edible mammal species of fresh or salt water, destined for internal consumption or export, and by extension, the byproducts obtained from the aforementioned products.

CHAPTER II
DEFINITIONS

Article 5.—For the purpose of this ruling the following definitions are formulated:

a—Fertilizer (manure) from fish products: The byproduct that does not meet the specifications determined by the flours (meal) of these products.

b—Oil from fish products: The liquid byproduct obtained by the treatment of primary sources through steaming, separating by decantation or centrifugation and filtration. Any treatment that results from simple pressing and decantation or by any other appropriate process is also accepted.

c—Cold sea water: The sea water whose temperature is 0° C (zero degrees centigrade) or slightly lower and that contains the same microbiological conditions that drinking water has.

d—Water from clean sea: This contains the same microbiological conditions that drinking water and has no undesirable substances.

e—Fish product stock: The liquid product obtained by boiling the product, with or without spices, canned and sterilized.

f—Collection center: This is a place or building used for the receipt, conservation and distribution of fish products.

g—contamination: The direct or indirect transmission of undesirable materials to the fish product.

h—Logbook: This is the book inscribed in the Veterinary Medical School in Honduras and authorized by the Secretary of Natural Resources in which the Veterinary Doctor is responsible for the approved establishment, consigns the . . .

APPENDIX T

Decree No. 245-2000

The National Congress,

WHEREAS the General Law of the Public Administration defines the areas of authority of the Secretariat of State in the Offices of Agriculture and Livestock, among which is included that which concerns the enforcement of the policies related to fishing, aquiculture and the protection of our hydrobiological resources;

WHEREAS the current Fishery Law, contained in Decree No. 154 dated May 19, 1959, sets forth sanctions of an administrative nature, the amounts whereof do not represent coercive measures that reflect the gravity of the violations committed, so that it is necessary to revise said sanctions according to the importance of the case and the current value of the national currency;

WHEREAS it is the duty of the State to ensure compliance with the fishery regulations in order to contribute with the sustainable yield of our hydrobiological species;

Therefore,

DECREE:

Article 1. Amend Article 70 of the Fishery Law, contained in Decree No. 154, dated May 19, 1959, which hereafter must read as follows:

"Article 70. The following violations shall be sanctioned:

a) Fishing with chemical or explosive elements, with a fine of 1,000.00 to 10,000.00 lempiras;

b) Fishing by persons without a license or with an expired license, with a fine of 50,000.00 to 500,000.00 lempiras;

c) Fishing with banned fishing gear, with a fine of 10,000.00 to 50,000.00 lempiras;

d) For marketing hydrobiological species in a closed season, with a fine of 1,000,000.00 to 2,000,000.00 lempiras;

e) For clearing mangrove swamps or destroying aquatic ecosystems in general, with a fine of 10,000.00 to 50,000.00 lempiras;

f) For polluting with any substance the maritime or continental waters, with a fine of 500.000.00 to 1,000,000.00 lempiras;

g) For capturing, destroying or extracting the protected hydrobiological species, especially the manatee *(Manatus americanus)*, with a fine of 50,000.000 to 100,000.00 lempiras;

h) Owners or captains of vessels who fail to report their catch, with a fine of 50,000.00 to 500,000.00 lempiras;

i) For conducting scientific research without a permit from the National Fishery Authority, with a fine of 50,000.00 to 100,000.00 lempiras;

j) Owners or captains of fishing vessels who fail to comply with the provisions relative to the installation of Marine Turtle Excluder Devices (DETs), according to what is

established by the National Fishery Authority, with a fine of 50,000.0 to 100,000.00 lempiras; and

k) For any other activity not expressly mentioned in the preceding items, but which is analogous, with a fine of 1,000,000.00 to 1,500,000.00 lempiras."

Article 2. Added to the aforementioned Fishery Law, the following Article:

"Article 81-A. The fines assessed by reason of the enforcement of this Law and the income received for the taxes, licenses or permits referred to therein must be paid to the General Treasury of the Republic and, through the General Budget of Income and Expenses of the Republic, must be allocated to the expense for the programs and projects carried out by the Secretariat of State in the Offices of Agriculture and Livestock through the General Fishery Directorate (DIGIPESCA)."

Article 3. The Executive Branch, through the Secretariat of State in the Offices of Agriculture and Livestock, shall issue whatever regulations as may be necessary to properly enforce the reforms introduced by this Decree in the Fishery Law.

Article 4. This Decree shall enter into effect at the time of its approval and must be published in the Official Daily *La Gaceta* ["The Gazette"].

Given in the city of Tegucigalpa, Municipality of the Central District in the Hall of Sessions of the National Congress, on the ____ day of the month of _____ of the year two thousand.

RAFAEL PINEDA PONCE
SPEAKER OF THE HOUSE

JOSÉ ALFONSO ROLANDO CÁRDENAS PAZ

HERNÁNDEZ CÓRDOVA
SECRETARY
Dse/

SECRETARY

APPENDIX U

[Coat-of-Arms]
National Congress
Secretariat
Tegucigalpa, D.C., Honduras, Central America

CONFIRMATION

The undersigned secretary of the National Congress **STATES:** That by means of Decree No. 198-2001, issued by the National Congress on November 1, 2001, **"Interpret Article 43 of the Civil Code to the effect that the total or partial express repeal of a law leaves without legal value or effects the general regulations and the specific regulations *in toto*, or in the part involving the amended article or articles when the amendment is partial, that the Executive Branch, through the respective Secretariat of State, has issued to implement the provisions of the repealed law, unless there is an express provision to the contrary in the new repealing Law,"** which, at this time, is in the process of receiving the appropriate signatures.

This Record is issued in the City of Tegucigalpa, Municipality of the Central District, on the seventh day of the month of November, two thousand one.
[illegible signature]
JOSÉ ALFONSO HERNÁNDEZ CÓRDOVA
SECRETARY OF THE NATIONAL CONGRESS
JAHC/ACCL/abr.
cc: File

APPENDIX V

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
201 Varick St. Rm. 731
NewYork, N.Y. 10014-4897

NEW YORK FROZEN SEAFOOD PRICES, WEEK ENDING FRI. November 6, 1998

Current selling prices ex-warehouse New York as reported by original receivers (importers, brokers, etc.) in the New York Metropolitan are in US DOLLARS/CENTS per pound unless otherwise stated). Fillets are skinless, unless otherwise stated.

* * * *

LOBSTER TAILS, SPINY:
AUSTRALIA: 5-6oz $20.00, 6-7 oz. $18.00 * * *
BAHAMAS: 4oz $14.30, 5oz $14.70, 6oz $14.85
BRAZIL: 2oz $10.50, 3oz $12.55, 4oz $14.45 * * *
HONDURAS: 2oz $9.75, 3oz $10.75, 4oz $13.25, 5oz. $14.35, 6oz $14.35, 7oz $14.35, 8oz $14.35, 9oz $14.15
PANAMA: 2oz $9.50, 3oz $12.50, 4oz $14.25, 5oz $17.25

* * * *

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
201 Varick St. Rm. 731
NewYork, N.Y. 10014-4897

NEW YORK FROZEN SEAFOOD PRICES, WEEK ENDING FRI. November 5, 1999

Current selling prices ex-warehouse New York as reported by original receivers (importers, brokers, etc.) in the New York Metropolitan are in US DOLLARS/CENTS per pound unless otherwise ,stated). Fillets are skinless, unless otherwise stated.

* * * *

LOBSTER TAILS, SPINY:
BAHAMAS: 4oz $14.80, 7oz $17.00.
BRAZIL: 2oz $11.25, 3oz $13.60, 4oz $15.50 * * *
HONDURAS: 2oz $9.50, 3oz $12.50, 4oz $14.25, 5oz. $17.25
PANAMA: 2oz $9.50, 3oz $12.50, 4oz $14.25, 5oz $17.25

* * * *

APPENDIX W

AO 245B (Rev. 9/00) Judgment in a Criminal Case: Sheet 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	JUDGMENT IN A CRIMINAL CASE (For Offenses Committed On or after November 1, 1987)
v.	
ROBERT D. BLANDORD a/k/a ROBERT DAVID BLANDFORD	CASE NUMBER: 1:00CR00079-002
THE DEFENDANT:	Jon May and Frank Rubino Defendant's Attorney

( ) pleaded guilty to count(s) ____
( ) pleaded nolo contendere to count(s) ___ which was accepted by the court.
(X) was found guilty on count(s) 1-22, 26, 27, 28-39 & 43 second superseding indictment after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count No.(s)
18 U.S.C. § 371	Conspiracy	05/10/2000	1
18 U.S.C. §§ 545 & 2	Importation contrary to law	02/04/1999	2-12

16 U.S.C. §§ 3372(a)(2)(A); 3373(d)(1)(B); 3373(d)(2) and 18 U.S.C. § 2	Importing illegal wildlife/Lacey Act	12/08/1998	13-22, 26, 27
18 U.S.C. § 1957 & 2	Fraudulent transactions of funds derived	12/11/1998	28-39
18 U.S.C. § 1957 & 1956(h)	Conspiracy to engage or attempt to engage in monetary transactions	05/10/2000	43

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

08/02/2001
Date of imposition of Judgment

/s/
RICHARD W. VOLLMER, JR.
SENIOR UNITED STATES
DISTRICT JUDGE

8-27-01
Date

Defendant: ROBERT D. BLANDFORD a/k/a ROBERT DAVID BLANDFORD
CASE NUMBER: 1:00CR00079-002

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 97 MONTHS, consisting of 60 months as to each of counts 1-22; 12 months as to each of counts 26 and 27; and 97 months as to each counts 28-39 and 43, all such terms to run CONCURRENTLY:

* * *

APPENDIX X

AO 245B (Rev. 9/00) Judgment in a Criminal Case: Sheet 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	JUDGEMENT IN A CRIMINAL CASE (For Offenses Committed On or after November 1, 1987)
v.	
ABNER J. SCHOENWETTER a/k/a ABNER J. SCHOENWETTER	CASE NUMBER: 1:00CR00079-003
THE DEFENDANT:	Martin A. Geigenbaum and Willie Huntley Defendant's Attorney

( ) pleaded guilty to count(s) _____
( ) pleaded nolo contendere to count(s) ___ which was accepted by the court.
(X) was found guilty on count(s) 1, 7-12 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count No.(s)
18 U.S.C. § 371	Conspiracy	05/10/2000	1
18 U.S.C. §§ 545 & 2	Importation contrary to law	02/04/1999	2-12
18 U.S.C. § 545 & 2	Importation contrary to law	02/04/1999	7-12

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

08/02/2001
Date of imposition of Judgment

/s/
RICHARD W. VOLLMER, JR.
SENIOR UNITED STATES
DISTRICT JUDGE

Defendant: ABNER J. SCHOENWETTER a/k/a ABNER JAY SCHOENWETTER
CASE NUMBER: 1:00CR00079-003

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 97 MONTHS, consisting of 60 months to each of counts 1, 7, 8, 9, 10 and 11 to run CONCURRENTLY and 60 months as to count 12, with 37 months to be served CONSECUTIVELY to the sentence imposed in the previous counts and the remaining 23 months to be served CONCURRENTLY to the sentence imposed in the previous counts:

* * *

APPENDIX Y

AO 245B (Rev. 9/00) Judgment in a Criminal Case: Sheet 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA	JUDGEMENT IN A CRIMINAL CASE (For Offenses Committed On or after November 1, 1987)
v.	
DIANE HUANG a/k/a DIANE HUADIN HUANG	CASE NUMBER: 1:00CR00079-004
THE DEFENDANT:	Denis B. Keene and Dennis J. Krizley Defendant's Attorney

( ) pleaded guilty to count(s) _____
( ) pleaded nolo contendere to count(s) ___ which was accepted by the court.
(X) was found guilty on count(s) 1, 13-27 & 47 after a plea of not guilty. (second superseding indictment)

Title & Section	Nature of Offense	Date Offense Concluded	Count No.(s)
18 U.S.C. § 371	Conspiracy	05/10/2000	1
16 U.S.C. §§ 3372(a)(2)(A); 3373(d)(1)(B); 3373(d)(2) and 18 U.S.C. § 2	Importing Illegal Wildlife/Lacey Act	12/08/1998	13-27
16 U.S.C. §§ 3372(d) &	False labeling of fish or	10/06/1996	47

3373(d)(3)(A)(i) and 18 U.S.C. § 2	wildlife		

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

08/14/2001
Date of imposition of Judgment

/s/
RICHARD W. VOLLMER, JR.
UNITED STATES DISTRICT JUDGE

8-27-01
Date

Defendant: DIANE HUANG a/k/a DIANE HUADIN HUANG
CASE NUMBER: 1:00CR00079-004

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 24 MONTHS, consisting of 24 months as to each of counts 1 and 47 and 12 months as to each of counts 13-27 to run CONCURRENTLY.

* * *